THE EROSION OF LAW ENFORCEMENT INTELLIGENCE AND ITS IMPACT ON THE PUBLIC SECURITY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

PART 3

OCTOBER 5 AND 20, 1977

Printed for the use of the Committee on the Judiciary

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EROSION OF LAW ENFORCEMENT INTELLIGENCE—CAPABILITIES—PUBLIC SECURITY

WEDNESDAY, OCTOBER 5, 1977

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 9:45 a.m. in room 1318, Dirksen Senate Office Building, Senator Strom Thurmond (acting chairman of the subcommittee) presiding.

Staff present: Richard L. Schultz, counsel; David Martin, analyst; Robert J. Short, investigator; and Alfonso L. Tarabochia, investigator.

Senator THURMOND. The subcommittee will come to order.

Today the subcommittee will again be taking testimony on the subject of "The Erosion of Law Enforcement Intelligence Gathering and Its Impact on the Public Security."

In the course of the continuing series of hearings on this subject, the subcommittee has already taken testimony from the Secret Service and the Drug Enforcement Administration; from former officials of the Treasury Department, the Justice Department, and the Internal Revenue Service; from a broad array of law enforcement officers working at the State and metropolitan levels; and from a panel of top security officers in the field of private industry.

The testimony presented to date establishes that there has been a catastrophic erosion of law enforcement intelligence, from almost every standpoint and at every level. Major State and local intelligence files that represent the product of many years of labor have either been destroyed or locked up.

Moreover, the free exchange of intelligence between Federal, State, and local enforcement agencies that used to be taken for granted has now come to an end because of the impact of the Freedom of Information Act and the Privacy Act.

What little intelligence does remain is virtually frozen in place, instead of being shared with others.

Perhaps the most dramatic evidence of what this is doing to our society was the statement of Mr. Stuart Knight, Director of the Secret Service, that as a result of the quantitative and qualitative fall off in the intelligence supplied to them, the Secret Service may today be getting only 25 percent as much intelligence as they used to get. In some cities, Mr. Knight told the subcommittee, the situation was so bad that the Secret Service had recommended against any visit by the President.

Before the subcommittee can write a comprehensive report covering all aspects of the problem, however, there are still a number of Government departments involved in law enforcement from whom we must hear. One of these is the Customs Service.

We are pleased to have with us as our witness today Mr. Robert E. Chasen, Commissioner of Customs. Mr. Chasen, will you rise and be sworn?

You have some advisors with you who may be called upon, so will you please rise and be sworn?

Mr. CHASEN. Yes.

Senator THURMOND. Do you swear that the evidence you shall give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CHASEN. I so swear.

Mr. DICKERSON. I so swear.

Mr. ROSENBLATT. I so swear.

Mr. LEHMAN. I so swear.

Mr. ROJEK. I so swear.

Senator THURMOND. Mr. Chasen, I believe you have some prepared remarks. You may now proceed.

STATEMENT OF ROBERT E. CHASEN, COMMISSIONER OF CUSTOMS, U.S. CUSTOMS SERVICE, ACCOMPANIED BY GLENN R. DICKERSON, DEPUTY COMMISSIONER OF CUSTOMS; WILLIAM ROSENBLATT, ACTING DIRECTOR, SPECIAL INVESTIGATIONS DIVISION; LEONARD LEHMAN, ASSISTANT COMMISSIONER, REGULATIONS AND RULINGS; AND THADDEUS ROJEK, ACTING CHIEF COUNSEL

Mr. CHASEN. Thank you, Mr. Chairman.

I would like to start by introducing some key people from the Customs Service whom I have brought with me.

Mr. G. R. Dickerson is the Deputy Commissioner. Mr. Ted Rojek is our Chief Counsel, on my left. Mr. Len Lehman is our Assistant Commissioner in charge of our office of Regulations and Rulings. Mr. Bill Rosenblatt is Acting Director of our Special Investigations Division.

Mr. Chairman, I am pleased to have the opportunity to appear before this committee today to present the views of the Customs Service on the subject of the erosion of law enforcement intelligence capabilities.

The Customs Service is mandated by law to collect revenue on imported articles and to enforce import restrictions and prohibitions applicable to articles which the Congress has determined pose a danger to the economy of the United States or the health and welfare of its citizens.

In carrying out these responsibilities the Customs Service in fiscal year 1976 cleared over 270 million passengers entering the United States at more than 300 ports of entry and processed nearly 3.3 million formal entries.

A formal entry is commercial merchandise valued at more than $250 which enters this country. In 1977 approximately $120 billion

of imports will come into this country. About $6 billion of duties will be collected by the Customs Service.

In addition, as a part of the never-ending war on the smuggling of illicit narcotics and dangerous drugs, Customs monitors land and sea borders which stretch some 96,000 miles. Faced with tasks of such overwhelming proportions we have placed great emphasis on the concept of "selectivity"—that is, developing criteria which permit us to direct our resources to situations involving high risk and payoffs. By high risks we refer to areas like Eagle Pass in Texas, which is remotely located and hard to control, or passenger entries from countries in South America, for example, which are known to grow illicit narcotics.

To a great extent, our effectiveness is therefore dependent upon the timely gathering of intelligence and other information regarding all aspects of international travel and trade, but particularly potential or ongoing unlawful activities and the effective maintenance of such data.

Both the Freedom of Information Act and the Privacy Act have imposed requirements and restrictions upon Federal agencies, including the Customs Service, with respect to the gathering and disclosure of information, which are having an adverse effect on the capability of the Customs Service to gather and maintain such information in a confidential manner.

On the one hand, it is not as readily available to Customs investigators as it has been in the past. On the other hand, it is now more likely to be disclosed pursuant to request under one of the aforementioned public access laws.

In general, less information is now being provided to the Customs Service from what have heretofore been informative sources such as public utilities, educational institutions, State, local, and foreign law enforcement agencies, and undercover informants.

This new reluctance to voluntarily pass on or release information to a Federal law enforcement agency has impeded the gathering of intelligence and diminished the work product of investigators.

A primary concern of such information sources is that Freedom of Information Act inquiries may lead to public disclosure of information provided by them which previously had been considered confidential. Confidential informants are particularly concerned that their identities may be revealed through such disclosures, either by direct disclosure of their identity or indirectly by deduction from information that must be disclosed.

Customs investigators believe that this particular concern has reduced and will continue to reduce cooperation between informants and law enforcement officers.

International law enforcement agencies have been less willing to provide intelligence and other needed information, the confidentiality of which we can no longer guarantee under present public disclosure laws.

In some cases these agencies have refused to provide information altogether. The Customs Service has encountered reactions similar to the ones cited to this committee 2 weeks ago by Mr. Peter Bensinger, Administrator of the Drug Enforcement Administration. He said that Scotland Yard provides DEA information "on the understanding

that it will be treated with utmost confidentiality and not released to any other agency without prior references to Scotland Yard."

Furthermore, negotiations leading to mutual assistance agreements with other countries have been made more difficult because we have been unable to guarantee that information received will be kept confidential. Those mutual assistance agreements now must include language that the agreements are subject to Federal legislation which might require disclosure of the information.

In addition, because of the difficulty of establishing a record system under the Privacy Act, exchange of information with the Customs Cooperation Council has been severely hampered. That is an international organization of about 84 countries, if I remember correctly, who have customs services and work together.

The Customs Service has not been able to disseminate information to this group, which serves as a clearinghouse for information of interest to customs services around the world, until the lengthy technical requirements of the Privacy Act are complied with. As a result, we have been receiving less information from the council.

Various interpretations of the Freedom of Information Act among different agencies of the Federal Government, different State and local agencies, and even in some cases within the same agency, have led to confusion as to what information must be disclosed. This lack of uniformity and resulting uncertainty as to what may be disclosed has caused State and local law enforcement agencies to become increasingly hesistant to release information.

As you know, Federal funds are made available to the various States through the Law Enforcement Assistance Administration to be used in furtherance of local criminal law enforcement. Federal law requires that any recipient of such LEAA funds must take steps to insure that criminal history record information and conviction data gathered by State agencies through the use of Federal funds is current, and disseminated only to authorized individuals or agencies.

In order to continue receiving these funds, States are required to enact legislation and promulgate regulations safeguarding the gathering and dissemination of the information maintained in systems established under LEAA funding programs.

These regulations require user agencies, including the Federal Government, to enter into agreements insuring compliance with the State laws and restricting further dissemination of information obtained from the State agency. Typically, such agreements set forth detailed procedures designed to safeguard dissemination and use of such information.

Also, many States have enacted their own privacy laws, some of which parallel the Federal Privacy Act, which impose restrictions on the release of information, but some of which are even more restrictive on the release of this information.

In a given case, Customs may not be able to safeguard information from a State in compliance with its privacy laws or our agreement with it because such information has become part of our intelligence files, and therefore falls within the purview of Federal disclosure laws which may be less stringent than the States'. More importantly for Federal law enforcement purposes, a State may recognize this reality and choose not to provide information to the Customs Service.

As important as it is for a Federal agency to receive and make use of information from State and local law enforcement agencies, we recognize that it is equally as important that State and local agencies have access to intelligence in the files of Federal agencies.

In the past, the Customs Service has routinely provided such information to State licensing and regulatory agencies to enable them to carry out their respective functions. However, the flow of information from Federal agencies has been impeded by the restrictions in the Privacy Act as to what may be disclosed.

Information, generally restricted, may be disclosed for certain law enforcement purposes under the terms of the Privacy Act, but this requires a determination in each instance whether the particular information to be disclosed meets the statutory standard and there is confusion as to what is encompassed by the act's restrictions.

Not only has the Freedom of Information Act and Privacy Act had a negative impact on obtaining information from government entities, these laws have also adversely affected the gathering of information from the business community.

In some cases business concerns must be contacted to obtain commercial information such as invoicing practices, trade information, trade statistics, suppliers' names, and practices followed, all of which is necessary for enforcement of statutes governing fraud, antidumping, countervailing duties, and classification, and appraisement of imported merchandise.

Due to the increasing reluctance to provide information voluntarily, subpenas are being used more frequently to obtain such information. These procedures make the timely gathering of this type of information more difficult.

I might say at this point that I guess if you go to New York and you stop 10 people on the street and ask them what Customs does they will tell you that he is the guy who pats the luggage at the airports. However, as you may know, I have only been with Customs a little over 2 months but I have learned that this relationship with the business community is a tremendous portion of what Customs does. These fraud-type investigations are critical.

In certain circumstances the procedures which a law enforcement agency is legally obligated to follow in order to pursue investigative information has had a chilling effect on the pursuit of such information. In order to obtain telephone toll records it is necessary, according to some State laws, to obtain a court order for the records. One State requires its telephone company to release toll records only upon receipt of a valid subpena or summons after providing notice to a subscriber that his records are to be released.

This advance notice allows a subscriber to contest the disclosure of his records and issues unless a court order is obtained prohibiting such disclosure only for 30 days.

These and other requirements are time consuming. As a consequence, some investigators will not attempt to obtain telephone records. Furthermore, if these records are requested, the subject of the investigation in an ongoing investigation, thereby compromising the investigation. Similar requirements as to banking records cause the same kind of problems for Customs investigators.

Under the Freedom of Information Act members of the public can request information on a wide range of subjects. In order to comply with the statute, we must conduct a search of the appropriate records, and the requested information must be copied and sent to the requestor.

We have found that the access provisions of the acts are frequently utilized both by individuals and law firms as discovery tools while a given matter is being investigated, considered for decision, or held in abeyance while policy is being formulated.

Law firms have been able to suspend or delay the processing of penalty cases and even penalty actions already imposed by filing such Freedom of Information Act requests on behalf of their client. Although disclosure in such cases may be denied in full or in part as determined on a case-by-case basis, the records frequently have to be copied or transferred to the Freedom of Information and Privacy Office to determine disclosure or exemption.

This alone causes interference and delays in the investigation and processing of the actual cases. In addition, this transfer creates attendant security risks since the case agent must cease the investigation, copy the data already compiled, and await a response from headquarters as to the scope of the disclosure, if any.

Another major concern of the Customs Service is that it is increasingly difficult to prevent the disclosure of information which hampers our intelligence efforts. For example, it is the position of the Customs Service that our law enforcement mission would be handicapped if information on intelligence gathering methods and surveillance techniques were made available to the public.

Nevertheless, on occasion we have been required to release manuals or materials which would reveal investigative and surveillance techniques.

Mr. SCHULTZ. If I might interrupt at that point, Mr. Chasen, by whom?

Mr. CHASEN. This is Ted Rojek, our chief counsel. He will answer your question.

Mr. ROJEK. In connection with the manual, that was in a case involving a lawsuit involving the city of Concord, Calif. There had been an undercover operation and a shoot out. One of our people had been shot by an undercover city police officer.

In the ensuing litigation, counsel representing the city of Concord requested the court to make us produce those manuals. The court denied discovery and counsel followed up with an FOIA request and ultimately sued us under the FOIA.

Mr. SCHULTZ. Were they produced en camera?

Mr. ROJEK. I believe they were produced for en camera inspection. I do not recall whether they actually became a part of the court record. Their purpose in obtaining them, of course, was to show what our manuals said with respect to the techniques involved and the conduct of our officers in such an undercover operation. Ultimately, the court agreed with the Government and refused to release the manuals. However, I am not sure the same result would occur under the existing law.

Mr. SCHULTZ. To your knowledge, is there a precedent for that in any other case?

Mr. ROJEK. I am not aware of any other precedent. I do understand that we do have a case under consideration at this time within the Agency in which a request for such manuals has been made.

Mr. SCHULTZ. Thank you.

Mr. CHASEN. Likewise, Customs has been required to disclose the names of agents, inspectors, and other officers involved in civil cases in response to Freedom of Information Act inquiries. We do not feel that it is prudent or wise to reveal the names of investigators or other law enforcement officers in any situation, criminal or civil, in which so doing would endanger their lives or physical safety, or the well-being of their dependents or other close associates.

The Customs Service has had a request from the Women's Division of the American Civil Liberties Union for a roster of all female Customs inspectors. This information was made available to them.

In addition, the Treasury Department received a request for the name and duty station of all Treasury employees.

Often a requestor is able to tell from a response which invokes a legally permissible exemption that he is the subject of an ongoing investigation, and he may then be able to alter his method of operation. In such a situation where notification to the individual that information is being withheld pursuant to an applicable exemption would serve to alert him that he is under investigation, we are not aware of any method of withholding that information under the Freedom of Information Act that would not violate the law.

Thus, besides inhibiting the gathering of intelligence information, these Federal laws may require disclosure of information which for law enforcement purposes is best not disclosed at all.

Because of the multitude of Federal, State and local laws and regulations in the area of public disclosure, investigations have become more difficult to pursue. Information available in one jurisdiction is not similarly available in another. The exchange of information with local police jurisdictions has been rendered more difficult in light of the fragmentation of State and local laws, their divergence from Federal law, and various interpretations of these laws.

While difficult to document, it is believed that certain records are no longer maintained and excessive amounts of time expended in verifying that information maintained is accurate, relevant, timely, and complete. In some cases, information formerly kept in field offices has been moved to headquarters and is no longer readily available to field personnel.

In closing, I believe that it is clear that any decline in intelligence gathering capabilities coupled with an increase in problems in maintaining investigative data makes our task more difficult.

However, I also believe that it is necessary to find some middle ground where the rights of Americans to privacy and open government as well as to effective law enforcement are protected.

Senator THURMOND. Thank you, Mr. Chasen.

Certainly, what you have told us in your testimony is frightening. It is not necessarily startling to us this morning because we have had other witnesses who have said virtually the same thing. We do thank you, however, for a very straightforward statement on the subject matter.

One of the previous witnesses that we had before the subcommittee, in describing intelligence, stated that he regarded intelligence as the eyes and the ears of the law enforcement agencies. Without intelligence, he said, we are in the position of a man who has his eyes blindfolded and his ears plugged.

From what you and other witnesses have told us, I am afraid that we are on that path and perhaps well down that road. Would you agree with that assessment? I am not asking you to adopt all of my language there, but would you agree with the assessment that we are in trouble in this area?

Mr. CHASEN. Yes; I do agree with that assessment. I might say that I served 12 years with the FBI. I left in 1952 and came back to the Government this summer. Therefore, objectively I can see the difference by virtue of the experience that I am undergoing. I quite agree with that statement.

Mr. SCHULTZ. In the light of the increasing handicaps under which you and your people must operate, you are to be congratulated on serving the public in the way that you do.

Looking at your statement, I note that you say you are getting less information from public utilities, less information from educational institutions, less information from business concerns, less information from undercover informants, less from State, local and other Federal agencies, and less information from foreign agencies. All of this must add up to a pretty serious loss of information.

As Senator Thurmond noted in his opening remarks, Mr. Stuart Knight of the Secret Service indicated that the Secret Service was getting 25 percent of the intelligence that they previously did. I wonder if you would be prepared to venture a rough estimate of the percentage of falloff in the intelligence available to your agency?

Mr. CHASEN. In terms of rough estimates, our investigators feel that the impact has been generally in the 40-percent-plus area. One of our regional directors of investigation said that it could be as high as 60 percent. However, the concensus is that it is at least 40 percent in terms of rough estimates.

Mr. SCHULTZ. Could you comment on the qualitative aspect of the intelligence information you are getting?

Mr. CHASEN. This is Bill Rosenblatt, representing our Office of Investigations.

Mr. ROSENBLATT. The repercussions of these two acts also have an effect on the quality of the information. There is a cumulative effect on this whole thing because when informers and law enforcement agencies as well as the private sector find out that we may have to make disclosure they are going to be very reluctant to provide information.

This can subject them to lawsuits. They do not want to get confronted with such a situation.

Mr. SCHULTZ. I was going to follow up that question by asking you to try to classify that—whether this erosion is "serious," "very serious," or "extremely serious." You have probably already answered that by saying it is in the area of 40 to 60 percent.

Let me follow up and ask what about the State and local governments and the other Federal agencies? Are you getting a serious reduction of information provided to you from State and Federal agen-

cies? I am not talking just about informer information. I am talking about other governmental agencies which should be helping you.

Mr. CHASEN. In evaluating the problem of obtaining information from private informants we would use the classification "serious."

Getting information from State and local governments, it ranges from "serious" to "extremely serious."

Other Federal agencies, we would categorize as "serious."

Mr. SCHULTZ. What about foreign agencies?

Mr. CHASEN. "Serious."

As far as educational institutions and public utilities and private firms, we would say "very serious." It is a very important problem to us.

Mr. SCHULTZ. You said in your statement that mutual assistance agreements with law enforcement agencies in other countries now must include language that the agreements are subject to Federal legislation which might require disclosure of information. Is this a requirement of the Freedom of Information Act or the Privacy Act?

Mr. CHASEN. Ted, do you want to answer that?

Mr. ROJEK. The reason that we include it is that these type of agreements fall into the category of "executive agreements." They are not like a treaty. Therefore, being unlike a treaty and being merely an executive agreement, they are subject to all domestic laws, including laws such as the Freedom of Information Act and the Privacy Act.

During the course of those negotiations, of course, our counterparts were aware of the restrictions and the limitations as well as the requirements that we may have to disclose. While these agreements at this time have had language put in that is designed, supposedly, to carefully guard whatever information they give us, we have been put on notice that in the event that those agreements in that respect are abridged, it will be more difficult for us to reach a similar agreement the next time around.

Mr. SCHULTZ. Could you provide for the record the relevant provisions of the Freedom of Information Act and also a copy of the Mutual Aid Agreement negotiated in recent years which contains such a clause in it?

Mr. CHASEN. Yes.

Senator THURMOND. It will be inserted in the record at this point.

[Material follows:]

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES REGARDING MUTUAL ASSISTANCE BETWEEN THEIR CUSTOMS SERVICES

The United States of America and the United Mexican States,

Considering that offenses against customs laws are prejudicial to the economic, fiscal and commercial interests of their respective countries,

Considering the importance of assuring the accurate assessment of duties and other taxes collected on the importation or exportation of goods, as well as the importance of controls on foreign commerce which each respective Customs Service enforces,

Convinced that action against customs offenses can be made more effective by cooperation between their Customs Services,

Having regard to the Recommendation of the Customs Co-operation Council on Mutual Administrative Assistance of December 5, 1953,

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of the present Agreement,

1. "Customs laws" shall mean such laws and regulations enforced by the Customs Services concerning the importation, exportation, transshipment and transit of goods, as relate to customs duties and other taxes, or to prohibitions, restrictions and other similar controls respecting the movement of goods and other controlled items across national boundaries.

2. "Customs Services" shall mean in the United States of America, the United States Customs Service, Department of the Treasury and, in Mexico, La Direccion General de Aduanas de la Secretaria de Hacienda y Credito Publico.

3. "Offense" shall mean any violation of the customs law as well as any such attempted violation.

ARTICLE 2

Scope of assistance

1. The Parties agree to assist each other through their Customs Services, to prevent, investigate and repress any offense, in accordance with the provisions of the present Agreement.

2. Assistance, as provided in this Agreement, shall also be extended upon request for the purpose of assessing customs duties and other taxes by the Customs Services and for the purpose of enforcing controls within the authority of the Customs Services.

3. Mutual assistance as provided in paragraphs 1 and 2 shall be provided for use in all proceedings, whether judicial, administrative or investigative and shall also include in the United States of America proceedings on "liquidated damages".

4. All actions under the present Agreement by either Party will be performed in accordance with its laws.

ARTICLE 3

Obligation to Observe Confidentiality

1. Inquiries, information, documents and other communications received by either Party shall, upon request of the supplying Party, be treated as confidential. The reasons for such a request shall be stated.

2. Information, documents and other communications received in the course of mutual assistance may only be used for the purposes specified in the present Agreement, including use in judicial or administrative proceedings. Such information, documents and other communications may be used for other purposes only when the supplying Party has given its express consent.

ARTICLE 4

Exemptions from Assistance

1. In cases where the requested Party is of the opinion that compliance with a request would infringe upon its sovereignty, public policy or other substantive national interests, assistance can be refused or compliance may be made subject to the satisfaction of certain conditions or requirements.

2. In cases where a request is made which the requesting Party itself would be unable to provide if requested by the other Party, the requesting Party shall draw attention to this fact in its request. Compliance with such a request shall be within the discretion of the requested Party.

ARTICLE 5

Form and Substance of Requests for Assistance

1. Requests pursuant to the present Agreement shall be made in writing. Documents necessary for the execution of such requests shall accompany the request.

When required because of the exigency of the situation, oral requests may also be accepted but shall be confirmed in writing.

2. Requests pursuant to paragraph 1 shall include the following information:

(a) the authority making the request;

(b) the nature of the proceedings;

(c) the object of and the reason for the request;

(d) the names and addresses of the parties concerned in the proceedings, if known;

(e) a brief description of the matter under consideration and the legal elements involved.

ARTICLE 6

Channel

1. Assistance shall be carried out in direct communication between officials designated by the Heads of the respective Customs Services.

2. In case the Customs Service of the requested Party is not the appropriate agency to comply with a request, it shall transmit the request to the appropriate agency.

ARTICLE 7

Execution of Requests

1. The law of the requested Party shall be applicable in the execution of requests; the requested Customs Service shall be required to seek any official or judicial measure necessary to carry out the request.

2. The Customs Service of either Party shall, upon the request of the Customs Service of the other Party, conduct any necessary investigation, including the questioning of persons suspected of having committed an offense, as well as of experts and witnesses.

3. The Customs Service of either Party shall, upon the request of the Customs Service of the other Party, undertake verifications, inspections and fact-finding inquiries in connection with the matters referred to in the present Agreement.

4. A request by a Party that a certain procedure be followed shall be complied with pursuant to the laws applicable according to paragraph 1.

5. A request by a Party that its representative be present when the action to be taken is carried out shall be complied with to the fullest extent possible.

6. The requesting Party shall, if it so requests, be advised of the time and place of the action to be taken in response to the request.

7. In the event that the request cannot be complied with, the requesting Party shall be promptly notified of that fact, with a statement of the reasons and of circumstances which might be of importance for the further pursuit of the matter.

ARTICLE 8

Files, Documents and other Materials; Experts and Witnesses

1. Originals of files, documents and other materials shall be requested only in cases where copies would be insufficient.

2. Originals of files, documents and other materials which have been transmitted shall be returned at the earliest opportunity; rights of the requested Party or of third parties relating hereto shall remain unaffected.

3. The Customs Service of one Party shall authorize its employees upon the request of the Customs Service of the other Party, to appear as experts or witnesses in judicial or administrative proceedings in the territory of the other Party and to produce such files, documents or other materials or authenticated copies thereof, as may be considered essential for the proceedings.

ARTICLE 9

Costs

The Parties shall waive all claims for reimbursement of costs incurred in the execution of the present Agreement, with the exception of expenses for experts and witnesses.

ARTICLE 10

Special Instances of Assistance

1. Upon request, the Customs Services shall inform each other whether goods exported from the territory of one Party have been lawfully imported into the territory of the other Party. The information shall, upon request, contain the customs procedure used for clearing the goods.

2. The Customs Service of one Party, upon the request of the Customs Service of the other Party, shall, to the extent of its ability, exercise special surveillance of:

(a) means of transport suspected of being used in offenses within the territory of the requesting Party,

(b) goods designated by the requesting Party as the object of an extensive clandestine trade of which it is the country of destination,

(c) particular persons known or suspected by the requesting Party of being engaged in an offense.

3. The Customs Services of the Parties shall, upon request, furnish each other all available information regarding activities which may result in offenses within the territory of the other Party. In serious cases which could involve substantial damage to the economy, public health, public security, or any other vital interest of the other Party, such informtaion shall be supplied without being requested.

4. The Customs Services of the Parties, for the purpose of aiding, within the scope of their authority, in the repression of offenses involving narcotics, will communicate to each other as far as possible, without the necessity of a request, all information regarding such possible violations of the customs laws of the other Party.

5. The Customs Services of the Parties shall take such steps as may be appropriate and within the scope of their authority in order to ensure that goods exported and imported over the common frontier pass through the competent Customs offices and under such controls as it may be appropriate to impose.

6. The Customs Services of the Parties shall communicate to each other for that purpose a list of the Customs offices located along the common frontier, details of the powers of those offices and their working hours and, when appropriate, any changes in these particulars.

7. The Customs Services of the Parties shall endeavor to correlate the powers and working hours of corresponding Customs offices, subject to operational and working limitations and in accordance with the requirements imposed by the flow of their international trade.

8. The Customs Services shall furnish each other all information which may be useful for enforcement actions against offenses, in particular information relating to new methods used in committing such offenses. They shall, furthermore, furnish copies of reports or excerpts from reports on the subject of special means for combating offenses.

9. The Customs Services of the Parties shall, upon request, furnish all available information, on a continuing basis, regarding the movement of goods, vessels, vehicles, and aircraft between the United States and Mexico.

ARTICLE 11

Implementation of the Agreement

The United States Customs Service, Department of the Treasury of the United States of America and La Direccion General de Aduanas de la Secretaria de Hacienda y Credito Publico of Mexico, may communicate directly for the purpose of dealing with matters arising out of the present Agreement which are not questions of foreign policy or international law, and after consultation shall issue any administrative directives for the implementation of the present Agreement, and shall endeavor by mutual accord to resolve problems or doubts arising from the interpretation or application of the Agreement.

ARTICLE 12

Territorial Applicability

This Agreement shall be applicable to the customs territory of the United States of America and to the customs territory of Mexico. It shall also be applicable to the Virgin Islands of the United States of America.

ARTICLE 13

Entry into Force and Termination

1. This Agreement shall enter into force sixty days after the date on which the Parties notify one another by an exchange of diplomatic notes that they have accepted its terms.

2. The Parties agree to meet in order to review this Agreement at the end of five years counted from the date of its entry into force, unless they notify one another in writing that no review is necessary.

3. This Agreement may be terminated by denunciation by either Party and shall cease to be in force six months after the notification of the denunciation has been made.

DONE at Mexico City, Mexico on September 30, 1976, in duplicate, in the English and Spanish languages, both texts being equally authentic.

For the United States of America:

JOSEPH JOHN JOVA,
Ambassador of the United States of America.
VERNON D. ACREE,
United States Commissioner of Customs.

For the United Mexican States:

REUBEN GONZÁLEZ SOSA,
Under Secretary of Foreign Relations.
OSCAR REYES RETANA,
Director General of Customs.

Mr. CHASEN. Incidentally, these agreements are with Germany, Austria, and Mexico. They are so new that we have not yet renewed any of them.

Mr. SCHULTZ. Continuing with this line of questioning, has this made the negotiations for mutual assistance agreements more difficult?

Mr. CHASEN. We do not know. The first negotiations, as I understand it, went rather smoothly. When they have to be renegotiated is when we will find out the true impact.

Mr. SCHULTZ. Are you aware of any instances where a renegotiation has resulted in a denial of a mutual assistance contract agreement?

Mr. CHASEN. We have not yet reached that point in time.

Mr. SCHULTZ. If I understand your testimony, even where you have mutual assistance arrangements, other governments are still worried when our law enforcement agencies request specific information from them. Have such requests for specific information frequently been denied by other foreign agencies?

Mr. CHASEN. Not that I am aware of, sir.

Mr. SCHULTZ. The foreign law enforcement agencies, I believe, used to send us information voluntarily and without request. Do they ever do this today?

Mr. CHASEN. Yes; they do it cautiously. This includes not only the individual foreign law enforcement agencies, but also Interpol, with whom we relate.

Mr. SCHULTZ. Did you have a comment, Mr. Rosenblatt?

Mr. ROSENBLATT. Prior to these acts, sir, our relationship with our counterparts was a one-on-one situation. We refer to it as the Customs to Counterpart Agreement.

Our customs attaché always had a personal relationship with the line officers. Because of the awareness on the part of foreign authorities about the disclosure laws, this free exchange of information has decreased. We have been advised by our customs attaché that there is a decrease.

From a diplomatic standpoint, they would not come out directly and tell us that it is because of our laws that they are not going to give us this information. The rapport that we have built up with them is such that they would not come out and insult us by saying we have a problem.

However, what they would do is withhold the information. We can see this, and we understand why.

Mr. SCHULTZ. You are at least allowed to save face, then.

Mr. ROSENBLATT. Yes, sir.

Mr. SCHULTZ. You said in your testimony that the situation has been made even worse by conflicting interpretations of the Freedom of Information Act. Federal, State, and local agencies are all uncertain because of this confusion and they are, therefore, increasingly hesitant to release any information.

In short, on top of the institutional paralysis resulting from the Freedom of Information Act and the Privacy Act you have superimposed a kind of psychological paralysis that is a product of uncertainty and fear. Is that correct?

Mr. CHASEN. We might phrase it as an "inhibiting apprehension."

Mr. SCHULTZ. Intelligence does not do much good, does it, if it is frozen in place and not exchanged?

Mr. CHASEN. We have been adversely affected, there is no question about it.

Mr. SCHULTZ. Inhibiting apprehension?

Mr. CHASEN. That is a phrase we would like to use.

Mr. SCHULTZ. That is somewhat akin to the words, "chilling effect."

Mr. CHASEN. We used that in our testimony.

Mr. SCHULTZ. That is something which we all recognize.

In your prepared statement you say that, as a condition of getting assistance from the Law Enforcement Assistance Administration, States are required to enact legislation and promulgate laws safeguarding the gathering and dissemination of information in systems established with LEAA funding. Does this mean that in order to qualify for LEAA funding States have to pass laws that roughly conform to the Federal law on freedom of information and privacy?

Mr. CHASEN. This is our understanding.

Mr. SCHULTZ. Is this a requirement or simply a ruling by the LEAA?

Mr. CHASEN. We did not hear the last part of your question.

Mr. SCHULTZ. Is this a requirement of the law or is it simply a ruling or regulation by LEAA?

Mr. ROSENBLATT. We understand, sir, that it is a part of the law.

Mr. CHASEN. That is our understanding.

Mr. SCHULTZ. Perhaps you could provide us with some documentation on that.

[Mr. Chasen subsequently supplied the following:]

Section 28 C.F.R. part 20 enacted pursuant to § 524(b) of the Crime Control Act of 1973, Public Law No. 93-83, 87 Stat. 197.

Mr. SCHULTZ. You say that many States have passed privacy laws which are even more restrictive than the Federal law. Would your legal department be able to provide for the record several examples of much more restrictive State legislation? You do not have to provide us with the full text of the State laws—just the relevant clauses.

Mr. CHASEN. We might comment that the States which fall within that category that we can think of offhand are Massachusetts, Illinois, and Iowa.

[Mr. Chasen subsequently submitted the following:]

MASSACHUSETTS

A Fair Information Practices Act, passed late in the 1975 session of the Massachusetts General Assembly, grants state residents the right to inspect and challenge information kept on them by state agencies. The law also will require the secretary of state to make available for public access a list describing all data systems maintained by state agencies. Also, access to state data systems would be limited. Unique to the new Massachusetts law is a prohibition on release of personal data in response to a subpoena unless the individual has been notified beforehand.

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PRIVACY

A 1974 addition to the Civil Trials and Appeals Code (214.3) provides that "(a)person shall have a right against unreasonable, substantial or serious interference with his privacy." Superior courts are given the right of enforcement.

Information systems regulation

The Massachusetts Fair Information Practices Act (Chapter 776, Acts of 1975) requires the responsible authority for all state and local government data systems to: inform appropriate agency employees of the provisions of the act; prevent inter-agency transfer of personal information unless authorized by the individual or by statute or regulation; maintain a record—including the identity of the individual or organization—of every access to the personal data system; make available to an individual on request a list of all users of the file with his record; maintain data that is accurate, complete, timely, pertinent, and relevant; make all data maintained on a person available to him on his request; establish procedures whereby an individual may contest the accuracy or relevance of information kept on him and have the information corrected or deleted if necessary; and prevent release of data in response to a "compulsory legal process" demand without informing the individual beforehand.

A notice describing each personal data system must be filed by the agency with the secretary of state. The notice must include: name, nature, and purpose of the system; number of individuals filed within the system; categories of data maintained; the agency's policies regarding data storage, retention, and disposal; categories of data sources; a description of uses and users of the data; and a list of steps taken to comply with the Fair Information Practices Act. These annual notices are to be compiled and published as public record by the secretary of state.

Violation of any of the provisions of the act is ground for civil suit to recover damages. Exemplary damages of not less than $100 will be awarded for each agency violation.

Criminal information systems regulation

(*6.167 et seq.*) A Criminal History Systems Board is established to oversee and regulate criminal-information systems and allow, in certain circumstances, the purging of past arrest records.

Arrest Record Expungement.

(276.100A) A person convicted of a criminal offense may request that pertinent records on file in the office of the commissioner of probation be sealed. (94.34) Arrest and conviction records for a first violation of the Controlled Substances Act may be sealed.

Polygraph.

(149.19B) Lie-detector tests are prohibited as a condition of original or continued employment. A 1973 amendment expanded the law's scope to include police officers.

Consumer Credit Reporting.

(50.93) A credit reporting agency may issue reports only upon court order with written authorization of the consumer, or for legitimate business reasons. Personal and obsolete information may not be disclosed.

A consumer must be given access to the nature, contents, and substance of all information except medical information. Right of contestation and correction are granted. When personal, family, or household credit or insurance is denied, the name and address of the responsible credit-reporting agency must be disclosed.

Failure to comply with the provisions of the act constitutes an unfair-trade practice.

ILLINOIS

FREEDOM OF INFORMATION

Open Records.

The Illinois State Records Act (116 Section 43) gives any person the right to inspect public records—defined by the act as those records detailing the obligation, receipt, and use of public funds. The records custodian must supervise the copying of any public records. A fee equivalent to that charged for providing such copies may be charged for such supervision. A fee schedule is established.

There are no provisions for appeal, oversight, or penalty for improper denial of access.

Title 35, Section 9 directs all county clerks to open all records within their custody. The one exception is those records exempted by the Vital Statistics Act.

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IOWA

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PRIVACY

Criminal Information Systems Regulation.

(749B) Criminal history records may be disseminated by the Department of Public Safety only to criminal-justice agencies. Any person may examine the criminal-history data that pertains to him and may file with the department for correction or deletion of information. Judicial review is authorized.

Intelligence data and surveillance data are the only exceptions to the provision that all information may be stored and retrieved by computer. The public safety department is charged with regulating the various agencies' participation in systems for exchange of criminal-history data.

The act created a nine-member Confidential Records Council to monitor the operation of governmental information systems; review the implementation and effectiveness of, and recommend changes in, the legislation and regulations for such systems; require reports as necessary; receive and review complaints; conduct inquiries and investigations; oversee agency rules to "assure the accuracy, completness, and proper purging of criminal history data"; and oversee all rearrangements for the interchange of criminal-history information. Any person may institute civil action for damages for violation of the act, with conviction for willful violation carrying a fine of up to $1,000 and/or imprisonment for up to two years.

CALIFORNIA

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PRIVACY

Polygraph.

(432.2) No employer in the private sector may require a lie-detector test as a condition of original or continued employment.

Reporter's Privilege.

(Evidence Code 1070 *et seq.*) No news person may be required to disclose the source or substance of any information received in a professional capacity.

Recent Legislative Proposals.

AB 1429 would have barred state agencies from obtaining customer records of financial institutions except when disclosure is authorized by the customer in writing or in response to a court subpoena, summons, or search warrant. The bill was passed by both houses but vetoed by the governor. SB 852, very similar to the Federal Privacy Act of 1974, would have created a regulatory information practices commission. This bill also was vetoed by the governor.

Personnel Files.

(Labor Code 1193.5) An employee in California now has the right to see at least portions of the personnel files maintained on him by his employer. The breakthrough in access privileges for individuals employed in the private sector came in a novel way—SB 955's amendment to the state labor code—rather than through full-blown privacy legislation.

Section 1198.5 reads as follows: "Every employer shall, at reasonable times upon the request of an employee, permit that employee to inspect such personnel files which are used or have been used to determine that employee's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action. This section does not apply to the records of an employee relating to the investigation of a possible criminal offense. It shall not apply to letters of reference.

Mr. SCHULTZ. On page 5 of your statement you say that a State may choose not to provide information to the Customs Service. Has this happened often?

Mr. CHASEN. It has happened. We cannot say that it has happened often. On the other hand, we do not go back to get hit on the head again. Therefore, it is difficult to use the word "often." It has happened.

Mr. SCHULTZ. It is my understanding that in the old days, that is, before the Freedom of Information and Privacy Acts, when one law enforcement agency—Federal, State, or local—got a request for information from another law enforcement agency they would comply with the request on a routine basis. They did this in the old fashioned belief that they were serving the public good and the cause of effective law enforcement.

Now you say that Federal agencies receiving requests for information have to carefully evaluate each request for the purpose of determining whether it falls within the "certain law enforcement purposes" specified by the Privacy Act, and whether the information to be released meets standards about which there is all kinds of confusion.

Doesn't this have a terribly chilling effect on the release of any intelligence?

Mr. CHASEN. Yes, it does.

Mr. SCHULTZ. You make the point that as a result of the Freedom of Information Act and the Privacy Act you now frequently have to use subpenas to get information from telephone companies, banks, and other private concerns, and that many private concerns proceed to notify their clients that their records have been subpenaed.

When a suspect is put on notice that he is being investigated, doesn't this frequently torpedo the investigation? How do you overcome this?

Mr. CHASEN. We have had specific cases where the investigator has encountered critical problems because of this. If you have further interest in details of some specific cases we can provide those to you.

Mr. ROSENBLATT. Sir, if I may——

Where we run across the problem of providing a subpena to a telephone company or to a financial institution and there is a law that states that the individual concerned must be notified ahead of time, such as in the State of New York, obviously we do not use that technique. There is no sense in investigating an individual or an organization involved in a conspiracy against some customs related law and tip our hand, so to speak.

What we do is just avoid utilizing the services as we had in the past—of these banks or of the telephone company—until we reach the point in the investigation where we do not care if the technique is exposed.

It makes our investigations that much more difficult. It is a longer process. More man-hours are expended, of course. The cost factor does go up.

Mr. SCHULTZ. The result, of course, is the wiping out of cases with a loss of man-hours which have gone into the development of the cases.

Correct me if I am wrong, but I assume that you have some administrative procedure for closing a case, which would of course be useful if you were not yet ready to disclose the fact that you wanted to seek telephone, bank, or other records. I suppose you would just close the case until you have more information.

Mr. ROSENBLATT. Well, we may, sir, but we might more likely continue an investigation if we thought it was worth while and just forego those particular leads at that given time. We would not necessarily be thwarted by the fact that we could not get that information. We would try to use our imagination and innovation to get the information a different way.

Mr. SCHULTZ. Isn't it also true that in many criminal investigations you have to move fast and that you may lose your quarry entirely if you have to go through a procedural rigmarole that may take several days' time to get some telephone numbers, financial data, or other relevant data?

Mr. ROSENBLATT. Absolutely, sir. I think the key word there is "timely." To obtain intelligence information means nothing if you cannot do something with that information on a timely basis. We have the problem of receiving information and receiving it on a timely basis.

This is somewhat curtailed by the two acts that we are talking about today, depending upon the exemptions and the requirements.

Mr. SCHULTZ. Mr. Chasen, I have a series of questions here about the problems you have had to contend with in handling requests under the Freedom of Information Act. Since the questions are rather detailed and require detailed replies I am going to request that you respond to them in writing. We will provide them to you today.

Additionally, I am wondering if when you provide the responses to those inquiries you might—I understand that this may require some policy guidance—perhaps you might indicate to us what you believe the needs to be causing amending the Federal law so that we can insure having an effective law enforcement community?

Mr. CHASEN. Yes, sir.

Mr. SCHULTZ. Mr. Martin, do you have some questions?

Mr. MARTIN. I have a few specific questions on this bearing on the testimony of previous witnesses. Some of them indicated that they would like to see the act amended—the Freedom of Information Act

and the Privacy Act—in a manner which exempts Federal agencies from disclosing the rosters of investigative agents.

Would you favor such an amendment?

Mr. CHASEN. Yes; we would.

Mr. MARTIN. Some of them indicated that they would favor an amendment which exempts law enforcement training manuals where these manuals have to do with investigative techniques and other sensitive matters.

Would you favor such an amendment?

Mr. CHASEN. Yes; we would favor that type of amendment.

Mr. MARTIN. Would you favor an amendment which removes the 10-day limit on replies so that you would have more flexibility in dealing with the requests from subjects under active investigation?

Mr. CHASEN. We would very strongly favor that amendment.

Mr. MARTIN. You favor quite a few amendments. Are there any other amendments you have in mind or that you have discussed among yourselves which I have not mentioned?

Mr. CHASEN. As you know, we are not able to provide official legislative proposals without obtaining prior approval from the Treasury Department and OMB. However, from what has been said here today, there are some obvious changes that could be made to help resolve the problem of erosion of intelligence. It is my personal view that the provision that used to be in the act which excluded all investigation files from disclosure was a sound one and that any concern over potential abuse of such a provision could be covered by providing for strict disciplinary measures against anyone who abused the exemption.

Mr. SHORT. Mr. Chasen, how do you handle personnel rosters at the present time? Do you disclose the investigators—the 1811's—as well as the others? Do you disclose criminal and general investigators, or is that withheld?

Mr. CHASEN. I will let Bob Dickerson answer that.

Mr. DICKERSON. We disclose it if we are requested to disclose the name of an 1811 investigator. The name is disclosed.

Mr. SHORT. They are not withheld at all?

Mr. DICKERSON. They are not withheld.

Mr. SHORT. The total personnel roster of Customs is available under the Freedom of Information and Privacy Acts?

Mr. DICKERSON. That is correct.

Mr. LEHMAN. If I may, I would like to modify that in only one respect. Under the guidelines which the Civil Service Commission promulgated the only exception to this disclosure would arise in a case where it is requested for purely commercial purposes, such as to establish a mailing list to solicit business of some kind.

However, if, for example, we got a request from an organization which clearly was not going to utilize it for commercial exploitation we would be compelled to release it.

Mr. SHORT. Thank you.

Mr. Martin?

Mr. MARTIN. Your testimony, if I understood it correctly, indicates that criminal violators can benefit from the Freedom of Information Act in three different ways. First, they can use the act as a discovery tool to find out what is in their files.

Second, if arrested they can use it to drag out their cases in the courts.

Third, if convicted they can use it to suspend or delay penalties already imposed.

Is that a correct summary?

Mr. CHASEN. That is correct.

Mr. MARTIN. Doesn't all this make life a lot more secure for criminal elements and a lot less secure for law abiding citizens.

Mr. CHASEN. I would agree with that statement.

Mr. MARTIN. For the purpose of clarification, if you get a request from someone who is the subject of a current investigation, I believe you are supposed to answer it within 10 days. If you do not answer it or if you answer it untruthfully you are violating the law.

On the other hand, if you answer it truthfully you may be putting a major criminal suspect in a position to evade the law. Isn't this a terrible dilemma for any law enforcement agency?

Mr. CHASEN. We feel it is.

Mr. MARTIN. On page 7 of your statement you say that you have been required to release manuals or materials which reveal investigative and surveillance techniques. Could you provide the subcommittee with a list of the manuals and instructional materials you have had to release pursuant to requests under the Freedom of Information Act? It would be helpful, too, if you could give us a one paragraph description of each manual.

Mr. CHASEN. Yes, we would be able to do that.

[Mr. Chasen subsequently submitted the following:]

THE CUSTOMS TECHNICAL INVESTIGATIONS MANUAL

Parts of this manual have had to be released on two occasions. The Technical Investigations Manual is a handbook intended for the use of Customs investigative personnel and designed to:

(1) Facilitate background research in Customs and related laws, regulations, and rulings pertaining to all fields of Customs technical investigations;

(2) Outline practical procedure for conducting effective Customs inquiries;

(3) Supply reporting guidelines to insure clarity and completeness required by those who depend on investigative reports to formulate accurate conclusions in practical application of the law.

In addition, we presently have six FOIA requests for manuals:

(1) A prison inmate has requested the "United States Customs Agents Manual";

(2) A Topeka, Kansas high school student has requested the "Training Manual" used presently by Treasury Agents;

(3) A California resident has requested the "Manuals of Instructions and Procedures for Customs Agents";

(4) A California attorney has requested "Your Internal Regulations and Guidelines Pertaining to the Investigation on Criminal Matters";

(5) National Treasury Employees Union has requested "A Copy of the Manual Used by Special Agents in Internal Affairs (Security)"; and

(6) A Washington, D.C. attorney has requested the "Customs Technical Investigations Manual, Inspectors Manual; and all finalized sections of Customs External Audit Manuals."

Mr. MARTIN. It was, I think, appalling to all of the members of the subcommittee and the staff to learn that you have been obliged to disclose the names of agents, inspector, and other officers involved in civil cases, and that you also had to release the names of all female customs inspectors to the women's division of the American Civil Liberties Union.

Why did you have to do this? Does the law require this or is it because of an agency ruling.

Mr. ROJEK. Under our interpretation of the Freedom of Information Act we were obliged to disclose the information in response to each of those requests.

Mr. MARTIN. Do you feel that the Freedom of Information Act compels the release of such information?

Mr. ROJEK. In connection with each of those requests, yes. Mr. Leham earlier explained that the one restriction which exists presently on such disclosures is that if the information is being sought for commercial exploitation, then we would not disclose it.

Other than that, the rosters have been disclosed.

Mr. MARTIN. Is it possible to resist applications sometimes by perhaps taking the matter to the courts or perhaps forcing the applicant to go to the courts?

Mr. ROJEK. That is true, sir, but as you perhaps know there is a requirement imposed on us by the Department of Justice that in any case in which the Agency is to deny a request under the Freedom of Information Act—if there is a strong indication that that denial will lead to further litigation, the denial itself must be cleared through the Freedom of Information Committee of the Justice Department. They do not always uphold or affirm the Agency's position.

If they feel that the case is one that is not sustainable in court their advice is that it must be released and that the Agency cannot deny it.

Mr. SCHULTZ. The reason for this is that when a lawsuit is filed, if it is filed, the employee will come under the protection and be defended by the Department of Justice. Is that correct?

Mr. ROJEK. The Agency as well as the employee. It is also, of course, in the interest of establishing uniformity of decisions throughout the Government service with respect to denials.

Mr. SCHULTZ. It is my understanding that a Government employee working in a supervisory capacity in handling Freedom of Information Act requests can go to jail for arbitrary and capricious decisions. I think that is the reason why the Department of Justice must approve the language of the denial, so that the employee is in good standing to be defended.

Is that a correct assessment?

Mr. ROJEK. This requirement actually precedes the Freedom of Information Act amendment that puts the employee in jeopardy. Their longstanding position on this has been simply one of evaluating the cases so that they can determine whether there is a fairly decent chance of prevailing if they have to go to court. In other words, they are not interested in having a bunch of losers go to litigation and then be forced to defend them.

Mr. SCHULTZ. This must make for a terrific bottleneck in Justice.

Mr. ROJEK. It can, particularly with the time restrictions on responding to the initial request.

Mr. MARTIN. I must say that the testimony of all of you appears to indicate that you are all unhappy about having to disclose rosters of inspectors and Agency investigative personnel, and that you would prefer not to do it, but your hands are tied. You have no alternative under the laws that exist today.

Is that correct?

Mr. CHASEN. That is correct.

Mr. MARTIN. Don't such disclosures place some of your people in jeopardy, in varying degree? Aren't they destructive of morale?

Mr. CHASEN. We feel that these disclosures could place our people in jeopardy. We do feel that they are destructive of morale.

Mr. MARTIN. Those are the only questions I have, Mr. Schultz.

Mr. SHORT. Do you have a breakdown of categories of the most often requests that come from, say, prisoners or from your own employees? Is there a breakdown in the different categories?

Mr. CHASEN. We can provide that information to you. We have those breakdowns.

Mr. SHORT. When DEA testified—and I realize that they are under Justice and you are under Treasury—they stated that they were able to resist giving out the 1811 personnel rosters. I would just like to recommend that you talk to someone there, because apparently they do not interpret the law as being such. They can withhold this information.

Mr. TARABOCHIA. I understand that the U.S. Customs Service is almost charged singlehandedly with enforcing the Neutrality Act. This responsibility has grave repercussions on the international relations of the United States with other friendly countries.

In order to enforce the act, naturally, intelligence informants are of paramount importance. What is the current situation based on your previous statement regarding this vital service that you perform? Have any foreign governments been reluctant to cooperate with information in this field, or have there been any cases that were terminated because of the restrictions imposed on you?

Mr. ROSENBLATT. No. sir, there has not been. This is a very important area, as you have already stated. We are responsible for enforcing the Neutrality Act. Of course, some of those go into the area of terrorist activities.

Fortunately, there seems to be almost universal coordination and exchange of information about terrorist related activities vis-a-vis neutrality violations that come to our attention. However, these acts that we are talking about today can as time goes on have an adverse impact on our ability to obtain information from informants about the movement of weapons or ammunition or implements of war or terrorist related activities, whether it comes under our jurisdiction or some other agency's jurisdiction to investigate or some other country's concern. It is necessary to have the exchange of information in this area. It is vital, especially in today's climate of violent terrorist activities.

Fortunately, we have not had any problems to date in the exchange of information in this area.

Mr. TARABOCHIA. Have you had any requests for disclosure under the Freedom of Information Act of departments which resulted in violations?

Mr. CHASEN. To date, no, sir.

Mr. TARABOCHIA. Thank you.

Senator THURMOND. Mr. Chasen, we thank you for your testimony this morning.

We will look forward to reading your writtten responses to our questions. We thank you for being with us.

We will stand adjourned.

Mr. CHASEN. Thank you for inviting us.

[Whereupon, at 10:40 a.m., the subcommittee stood in recess, subject to the call of the Chair.]

[The questions submitted to Mr. Chasen and his answers to them follow:]

Question 1. What is the average time to process a routine Freedom of Information Act or Privacy Act request in which a file is found on the requestor and all information needed is available to identify him/her?

Response. In these circumstances, the average response time from date of receipt is 72 days. Also, on the average, it takes nine man-hours to handle such a request, although some cases require substantially longer time.

Question 2. How long is it taking to process a request in which no file is found?

Response. It takes about 20 days to process such a request.

Question 3. Will you ever be able to process requests within the 10 days as required by the Act? That is, for those requests in which a file is found?

Response. Given sufficient resources most requests could be processed within the 10 days required by the Act. However, some requests, as those requiring extensive research, retrieval of records from field offices or archives, consultation with other agencies, or which involve voluminous amounts of records, will nearly always require more than 10 days for processing and no practical way is apparent to handle these types of requests within the 10 day requirement.

Question 4. What do you consider a reasonable time frame?

Response. The variety of requests is so great that it is impossible to give a time frame that would be reaonable in all cases. For a simple request for information involving only a few records which are readily available, 10 days would normally be sufficient. In the case of complex highly detailed requests involving sensitive and/or voluminous amounts of information, 90 days might not be sufficient.

Question 5. What is your estimated cost for fiscal year 1977 and projections for fiscal years 1978, 1979, and 1980?

Response. Estimated service-wide cost for fiscal year 1977 for the administration of both the Freedom of Information Act and Privacy Act is $2.1 million (FOIA $1.6, Privacy $.5 million).

Projections for:

[In millions]

	Fiscal year 1978	Fiscal year 1979
FOIA	$1.8	$2.7
Privacy	.6	.8
Total	2.4	3.5

We have no projections for cost for fiscal year 1980 at this time.

Question 6. Beside the personnel you have within the Freedom of Information and Privacy Act Branch, how many other employees in other offices work on Freedom of Information and Privacy Act matters and are their costs included in the Freedom of Information and Privacy Act Branch cost estimates?

Response. More than 33 employees in offices other than the FOIA/Privacy Branch devote time to FOIA/Privacy matters. Their costs are included in the response to question 5, above.

Question 7. What is your projected level of activity over the next three years and do you foresee that your present complement will be enough to meet the number of requests?

Response.

Activity estimates	New	Completed	Backlog
Fiscal year:			
1977	2,100	1,900	800
1978	2,435	1,935	1,300
1979	2,476	3,320	456

Our present complement is not sufficient to keep ahead of the requests and reduce backlogs.

Question 8. Could you give a percentage breakdown of the type of requestors that use the Freedom of Information and Privacy Act that would fall in the following categories?

A. Criminals
B. Aliens
C. Curious citizens
D. Media
E. Researchers
F. Federal Government applicants

At the same time, could you please breakdown the types of files requested into:

A. Security
B. Criminal
C. Civil Matters
D. Applicant BI, etc.

Response. The listed categories of requestors do not appear representative of the requests received by the Customs Service and to be as responsive as possible we have added several categories to those listed.

	Percent
A. Criminals	15
B. Aliens	1
C. Curious citizens	10
D. Media	1
E. Researchers	1
F. Federal Government applicants	1
G. Interested citizens (i.e., have had some contact with Customs Service and ask for information)	31
H. Law firms (on behalf of clients)	30
I. Federal employees	10

If, however, the listed categories must be used, the following breakdown is suggested:

A. Criminals	15
B. Aliens	1
C. Curious citizens	81
D. Media	1
E. Researchers	1
F. Federal Government applicants	1

(It should be noted that we do not keep records by these categories and that we may not be able to determine whether a request is from a criminal, alien, or curious citizen. We have interpreted criminal generally to mean convict.)

The estimated breakdown by type of file requested is as follows:

	Percent
A. Security	2
B. Criminal	35
C. Civil matters	43
D. Applicant BI, et cetera	20

(It should be noted that we do not keep records by these categories. Security is interpreted as referring to classified files.)

Question 9. What benefits do you think have been derived from the Freedom of Information Act and the Privacy Act?

Response. (a) The public's increased understanding of how the Customs Service operates.

(b) Suspicions of excesses in the Customs Service handling of enforcement activities may be dispelled.

(c) Improvement in Customs Service recordkeeping practices and procedures.

Question 10. What negative impact, if any, have the Freedom of Information Act and the Privacy Act had on the primary mission of the U.S. Customs Service?

Response. The processing of requests for voluminous records has imposed considerable administrative burdens on the Customs Service, and in some situations unduly complicates or interferes with the processing of the actual matters to which the requested records relate. For example, the access provisions of the Acts are frequently utilized both by individuals and law firms as discovery tools while a given matter is being considered for decision or while policy is being formulated. Although disclosure in such cases may be denied in full or in part,

as determined on a case-by-case basis, the records frequently have to be copied or transferred to the Freedom of Information and Privacy office to determine disclosure or exemption. Obviously, this alone causes interference and delays in the processing of the actual cases, and requires lengthy consultations and policy discussions among the respective offices involved in the case. In this manner, the Freedom of Information and Privacy Acts frequently become additional complicating factors in the processing of cases. This is especially true in cases involving various customs transactions which have monetary or other economic impact on the parties.

The time-consuming requirements of adopting new Privacy Act systems of records results in delays in starting up new programs, and some times in discouragement or abandonment of a program in favor of one that does not come within the Privacy Act.

When the Customs Service established its Freedom of Information and Privacy Branch in 1975, all of the members of the new branch were drawn from other operating branches of the Service. While new employees have since been added, the administration of the Acts has clearly imposed additional manpower requirements on the Service which have been partially satisfied by drawing employees from other areas, largely without replacement. In addition, employees in other offices of the Customs Service must be detailed to duties concerned with the implementation of the Acts, obviously taking them away from their regular duties.

From the standpoint of the Office of Investigations, the Privacy Act has made it substantially more difficult to obtain information on violators of the Customs laws and the Freedom of Information Act has made more information concerning investigative procedures available to actual and would be violators, thereby enhancing their chances of escaping detection.

Additionally, the thesis implied in the Acts that a criminal has a right to the privacy of his criminal acts is causing deep concern among professional law enforcement personnel of this office.

Question 11. How many requests have you had in which you had no file or record?

Response. Approximately 6 percent.

Question 12. How many requests have you had in which you have had to close them administratively because the requestor does not provide the required information (i.e., notarized signature, date of birth, Social Security number, etc.) How long do you wait before closing them?

Response. Records are not kept, but approximately 2 to 4 percent of requests received are administratively closed because required information is not provided. These cases are normally closed after 90 days.

Question 13. How much has the U.S. Customs Service collected in fees since the Freedom of Information and Privacy Act cases began to be processed?

Response. Records are available only for calendar years 1975 and 1976 for the Freedom of Information Act. In those two years a total of $8,955.12 was collected. No data are available for the Privacy Act, but the amount collected would be substantially less.

Question 14. How many cases do you have in litigation? What are the primary reasons for these litigated cases?

Response. Five cases are presently in litigation. These cases are in litigation over the Customs Service withholding of documents pursuant to an exemption.

Question 15. How many litigated cases have achieved final action and how many has the Government won?

Response. We have been advised that in the past 4 years, 12 cases have achieved final action. It appears that the Government has won 5 of these 12 cases although frequently many issues are involved in the litigation and it is not unusual to prevail on some issues while losing on others, making it difficult sometimes to determine whether the Government has won or lost.

Question 16. What plans do you have for the future to reduce the costs and problems with processing Freedom of Information and Privacy Act requests (i.e., file automation, file destruction, use of non-agent personnel, etc.)?

Response. Although constant efforts are being made to improve and make the administration of the Act more effective, and progress has certainly been made as experience is gained, we foresee no reduction in cost. The continually increasing trend of requests for information and the easy access to the courts by the requestors suggest that the cost will in fact increase, and the administrative burdens will stay with us.

Question 17. Have you had any requests to release information under the Freedom of Information Act by major organized crime figures or racketeers on whom U.S. Customs had conducted investigations? How many such requests have you received and processed from minor organized crime figures?

Response. The Customs Service has received requests for information under the Freedom of Information Act from persons believed to be major organized crime figures or racketeers on whom Customs had conducted investigations. We have been unable to identify any requests received and processed from minor organized crime figures.

Question 18. Has the same consideration and openness afforded other requestors been given to their requests? If so, have any substantial investigative documents been released to them? Please provide examples.

Response. Major violators who submit requests receive the same consideration as any other requestor. A co-conspirator in the notorious 1971 French connection narcotics smuggling case was arrested by Customs Special Agents for causing to be smuggled and distributed into the U.S. some 200 lbs. of pure heroin, and conspiring to smuggle and distribute an additional 500 lbs. of the drug. The individual was tried, convicted and imprisoned. A one line request from him, which was processed under FOIA, resulted in 35 of 40 documents contained in his investigative file being disclosed to him.

Question 19. What do they seek to ascertain through their requests:

(a) Whether there was an informant involved.

(b) Informant's I.D.

(c) Investigative techniques.

Response. The typical request is for all information relating to a particular person or event rather than for the specific items noted in elements a, b, and c to question 19 and it is generally difficult to determine the motive for the request. It is likely, however, that criminal requestors may be attempting to ascertain any or all of the information set out in elements a, b, and c of question 19.

Question 20. Could the release of such information, even taking into consideration that the law allows for withholding confidential investigative elements, provide the criminal with sufficent data to deduce, after careful examination of the documents, all of the elements listed in question 19 above?

Response. Since the violator(s) in a criminal case knows more about the details of that particular violation than anyone else including the case agent, it is altogether possible that borderline or seemingly innocuous information released from a criminal case report could divulge sources of information and investigative techniques.

Question 21. What effect does the Privacy Act have on the exchange of information between private industrial security services and U.S. Customs as it regards cargo security?

Response. The Privacy Act acts as a deterrent to effective law enforcement in connection with imported and exported merchandise. As the Privacy Act prohibits the Customs Service from releasing information including intelligence on suspected violators to private security services, there is a loss of coordination and a diminution of the united front against cargo theft, pilferage and fraud which inevitably results in valuable losses to importers, exporters, private citizens and private enterprise. Situations exists in Houston, Miami, New York, and other metropolitan areas which reflect this problem. In Philadelphia, for example, the Office of Investigations has information and evidence of many cases of cargo theft, yet are prohibited by the Privacy Act from providing data to the Philadelphia Marine Trade Association (PMTA) who by contract with local unions have agreed to suspend union members apprehended in pilferage or cargo theft situations.

Although the PMTA is cooperating with the U.S. Customs Service, it represents a one-way flow of information. Customs takes intelligence of suspect activity from the PMTA, yet cannot reciprocate.

The same situation applies to railroad companies throughout the Nation. Conrail Rail. Philadelphia cooperates with U.S. Customs in reporting cargo thefts and pilferage yet the Customs Service is prohibited from providing information to Conrail's investigators.

In New York and other ports on the East coast, investigations have revealed some African nationals legally exporting their private vehicles. The Customs Service later learned from the NATB (National Auto Theft Bureau) that insurance claims have subsequently been filed in claim of stolen vehicles. The NATB then requests information from Customs which may show the vehicle

having been exported; however, the Privacy Act prevents the release of such information to private agencies.

These are but a few examples citing situations which require a freer exchange of information on criminal activity with the private sector.

Question 22. Could you give an estimate of the loss in dollars to the taxpayer resulting from this lack of exchange of information?

Response. We have no way to make a reliable estimate of the loss. However, it is clear that the loss from cargo theft must be borne by the importer or its insurance company and, in either case, causes an increase in costs. Ultimately, this increase is paid by the consumer who pays higher prices for the imported merchandise.

Question 23. What is the effect of the disclosure of personnel rosters? Could this disclosure identify a particular agent involved in a particular investigation. Would this include organized crime and narcotics investigations?

Response. Civil Service Commission regulations require disclosure of certain information pertaining to employees, including name, grade, salary, duty station, and position title. There are obviously circumstances in which disclosure of this information could identify a particular agent involved in a particular investigation, including organized crime and narcotics investigations, as in the case of covert investigations. While every effort is made to withhold names of employees when disclosure would be a clearly unwarranted invasion of their privacy or might endanger them, the identity of a requestor as an organized crime figure or criminal is not always known. Thus, because criminals might identify agents or their families, agents are subjected to increased risk of injury or death from the disclosure of personnel rosters. Also, covert activities in such cases might be severely hampered or completely curtailed. Generally, a lower morale among agents would lead to lower quality and less efficient investigations.

Question 24. Have there been any cases of personal harassment and/or intimidation to U.S. Customs agents resulting from the disclosure of rosters or names of individual investigators? If so, please provide details.

Response. Such harassment is not at all uncommon among agent personnel, but it is usually handled on an individual agent or field office level and seldom documented. Accordingly, there would be no statistics available. The disclosure of personnel rosters and individual agents names on reports of investigations, as has been the practice in Customs, can only serve to step-up the incidence of harassment of Customs enforcement personnel.

Question 25. Do you advocate the release of personnel rosters containing the names of investigators? If not, what actions has the U.S. Customs Service taken to prevent such release?

Response. No. Civil Service Regulations require disclosure of the name and certain other information relating to employees. There is not exception for investigators. Where disclosure of such information would be a clearly unwarranted invasion of personal privacy or would endanger the employee, the information is withheld. As previously noted, however, we are not always able to determine from the inquiry the purpose for which the information is requested.

Question 26. In the course of your testimony, you were in agreement to several recommendations for amending the Freedom of Information and Privacy Acts in a manner that would effectively protect the integrity of law enforcement operations at the same time as they assure the basic constitutional rights incorporated in these two acts. On the basis of the Customs Service experience, are there any other recommendations you would be prepared to offer for improving the Freedom of Information and Privacy Acts?

Response. We are not able to provide official legislative proposals without obtaining prior approval from the Treasury Department and OMB. It is my personal opinion, however, that a file concerning an active ongoing investigation or other enforcement proceeding should not be subject to any provisions of the Freedom of Information Act, such as those requiring release of reasonable segregable portions, administrative and judicial review of denials, and the requirement to provide detailed indexes of withheld materials. In the event that such a broader exemption from disclosure were to be enacted, it would, in my opinion, be wise to impose stricter disciplinary sanctions against officials abusing the exemption by arbitrary and capricious withholding.

Question 27. You have testified about the misgivings expressed by International law enforcement authorities concerning sharing information with the Customs Service, because they fear that this information may be divulged under

the Freedom of Information Act or the Privacy Act. Could you provide the Subcommittee with copies of any memoranda or correspondence relating to the concerns expressed by the British, French, West German, Canadian and other governments on the subject of sharing information with U.S. Customs—whether the correspondence and memoranda were directly between Customs and officials of these other governments, or whether the exchange of views was relayed through the Customs resident agents?

Response. Copy attached (from West German National Police).

Question 28. Would you provide the Subcommittee with nine or ten examples of cases in which arrests were made of individuals involved in Customs violations, when large amounts of currency were either confiscated or located, but IRS neglected to make the jeopardy assessment. In replying to this question, I do not intend for you to attempt to judge the reason IRS did not deem it proper to make such an assessment.

Response. We have no such examples because in the past few years IRS has not been requested to make jeopardy assessments.

Question 29. Could you cite a few cases in point where serious prejudice to the investigative process has resulted from the application of the Freedom of Information and Privacy Act? Specifically cases involving violations of the Neutrality Act which may have affected the relations of the United States with other friendly nations.

Response. We have no such cases.

Subject: Supply of Information Contained in Bundeskriminalamt Files to United States Agencies re: Guaranty of Confidentiality.

With reference to data protection regulations effective in the United States of America, such as the "Freedom of Information Act" and the "Privacy Act", we would like to draw your attention to the fact that all information supplied to you by the Bunderskriminalamt is of a confidential character. It can be furnished to you only on the understanding that it will be used exclusively for the purpose of preventing and investigating offenses. Therefore, it may come to the attention of those agencies only who have been assigned to such tasks. Other agencies or individuals must not be advised of either its contents or source or the fact of the existence of such an information.

This also applies to any information that had been provided to you by the Bundeskriminalamt in the past.

It is requested to ensure that the confidential treatment of our information is also guaranteed by all other services represented by your agencies cooperating with the Bundeskriminalamt.

It would be appreciated if you could acknowledge the receipt of this letter.

Dr. Herold,
President of the Bundeskriminalamt.

THE EROSION OF LAW ENFORCEMENT INTELLIGENCE—CAPABILITIES—PUBLIC SECURITY

THURSDAY, OCTOBER 20, 1977

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 9:40 a.m., in room 1114, Dirksen Senate Office Building, Senator Orrin G. Hatch (acting chairman of the subcommittee) presiding.

Staff present: Richard L. Schultz, counsel; Robert J. Short, investigator; David Martin, analyst; and Alfonso L. Tarabochia, investigator.

Senator HATCH. The Subcommittee on Criminal Laws and Procedures will now come to order.

We are meeting today in connection with our continuing inquiry into the erosion of law enforcement intelligence capabilities and its impact on the public security.

Our witness today is Mr. James M. H. Gregg, Acting Administrator of the Law Enforcement Assistance Administration.

Mr. Gregg, will you please rise and be sworn?

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GREGG. I do.

Senator HATCH. Mr. Gregg, we are happy to welcome you here today. We will be most interested in your testimony and we appreciate your coming.

STATEMENT OF JAMES M. H. GREGG, ACTING ADMINISTRATOR, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, ACCOMPANIED BY J. ROBERT GRIMES, ASSISTANT ADMINISTRATOR, OFFICE OF CRIMINAL JUSTICE PROGRAMS; AND HARRY BRATT, ASSISTANT ADMINISTRATOR, NATIONAL CRIMINAL JUSTICE INFORMATION AND STATISTICS SERVICE

Mr. GREGG. Thank you, Mr. Chairman.

I have with me two gentlemen this morning.

On my right is Mr. Harry Bratt, who is the head of LEAA's National Criminal Justice Information and Statistics Service. To my left is Mr. Robert Grimes, head of LEAA's Office of Criminal Justice Programs. They will be assisting me this morning.

Mr. Chairman, I have a rather lengthy written statement. With your permission, I would like to submit it for the record and highlight several points.

Senator HATCH. Without objection, it will be included in the record. You may proceed in any way you desire.

Mr. GREGG. Thank you.

[Material follows:]

PREPARED STATEMENT OF JAMES M. H. GREGG, ACTING ADMINISTRATOR, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

Mr. Chairman, I appreciate the opportunity to appear before this Subcommittee to discuss the programs of the Law Enforcement Assistance Administration in support of law enforcement intelligence-gathering capabilities.

LEAA's mission is to provide leadership and financial and technical assistance to State and local governments and organizations in order to increase their efficiency and effectiveness in controlling crime and delinquency and improving the criminal justice system. LEAA is not an enforcement agency and does not itself collect, analyze, use or disseminate intelligence information. LEAA funds may, however, be used to support such operations when conducted by state or local law enforcement and criminal justice agencies.

The following provisions of LEAA's enabling legislation, the Omnibus Crime Control and Safe Streets Act of 1968, as amended, are particularly pertinent to the Subcommittee's interest:

Section 301(b)(1) of the Act permits use of LEAA funds for "Public protection, including the development, demonstration, evaluation, implementation, and purchase of methods, devices, facilities, and equipment designed to improve and strengthen law enforcement and criminal justice and reduce crime in public and private places;"

Section 301(b)(5) authorizes funds to be used for programs to combat organized crime, including "the development of systems for collecting, storing, and disseminating information;" organized crime is defined in Section 601(b);

Section 307 mandates that LEAA and the various state planning agencies "shall give special emphasis, where appropriate or feasible, to programs and projects dealing with the prevention of organized crime . . .:"

Section 407 authorizes LEAA "to establish and support a training program for prosecuting attorneys from State and local offices engaged in the prosecuting of organized crime. The program shall be designed to develop new or improved approaches, techniques, systems, manuals, and devices to strengthen prosecutive capabilities against organized crime."

Section 524(b) requires that criminal history information collected, stored or disseminated through LEAA support be secure and private, and used only for law enforcement and criminal justice and other lawful purposes.

Section 518(a) is central to the operation of the LEAA program. It is an extension of the Congressional finding that crime is essentially a local problem which must be dealt with by State and local governments if it is to be controlled effectively. The provision limits LEAA's exercise of control over State and local intelligence-gathering and anti-organized crime activities:

> Nothing contained in this title or any other Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over any police force or any other law enforcement and criminal justice agency of any State or any political subdivision thereof.

Title III of the Omnibus Crime Control and Safe Streets Act of 1968 is also pertinent because it deals with wiretapping and electronic surveillance. That provision prohibits the interception of any wire or oral communication, or the attempt to do so using an electronic, mechanical or other device. The Congress found, however, that organized criminals make extensive use of wire and oral communications in their criminal activities, and that the interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice. Thus, the interception of communications by Federal and local law enforcement officials is authorized upon the granting of a court order approving the action. It should also be noted that the law does not apply when

one of the parties to the communication has given prior consent to the interception of the communication.

Acting on the basis that crime is essentially a local problem that must be dealt with by State and local governments if it is to be controlled effectively, the Congress provided that the bulk of LEAA funds be distributed to the state in block grants on the basis of population. Funds are allocated to the state contingent upon an annual comprehensive state plan, which must be approved by LEAA before funds are disbursed. The funds subsequently are distributed to the various units of State and local government through the state planning agencies which administer the LEAA program in the individual states.

LEAA is also authorized to award a small portion of its appropriation in the form of direct grants to the States, cities, counties, other units of government and non-profit organizations. These discretionary grants support innovative and experimental projects and programs of national scope. These grants have funded innovative police, courts and corrections improvement programs, as well as more specialized projects dealing with organized crime, narcotics control, juvenile and Indian law enforcement efforts.

In response to the statutory mandate concerning organized crime, LEAA has provided State and local governments with a high degree and wide range of assistance to improve their law enforcement intelligence capabilities. This assistance has included:

The provision of access to technical expertise;

Funds amounting to more than $180 million.

In the nine years of LEAA's existence, it has expended $185 million for grants relating to the criminal intelligence process. Eighty-five percent went for projects to control organized crime and narcotics; 14 percent funded intelligence related projects which were not limited to any specific type of criminal activity; and one percent funded projects for the control of riots and other violent civil disorders.

Only one discretionary fund category—the Organized Crime Discretionary Grant Program—solicited grant applications specifically for the development of criminal intelligence operations. The Organized Crime Program was established in Fiscal Year 1969, and is still a priority program with LEAA today. From Fiscal Year 1969 through Fiscal Year 1974, the Organized Crime Program funded criminal intelligence grants in three basic categories:

1. Interstate Intelligence, Analysis and Dissemination Center;
2. Statewide Organized Crime Intelligence Units; and
3. Metropolitan Area Intelligence Units.

The objective of the Interstate Intelligence Analysis and Dissemination Center was to stimulate and encourage the formation of multi-state or regional organized crime intelligence systems. Projects under this category were envisioned as having a central intelligence analysis and dissemination center, staffed with intelligence systems experts. Each participating state would contribute personnel to this project which would operate to pool resources and coordinate organized crime control strategies for the collection, storage, and dissemination of intelligence information. Only one project—the New England Organized Crime Intelligence System (NEOCIS)—was ever funded under this program category. After three years of operation and an extensive evaluation, it was determined by LEAA that the concept of a central intelligence repository for a multi-state intelligence operation was not feasible and the project was terminated.

The program category to establish statewide organized crime intelligence units accounted for 65 percent of all intelligence grants funded under the organized crime program.

Projects under this program category were similar in design to the multi-state or regional concept in that there was established a central intelligence repository for the state staffed with intelligence systems experts. The system is generally operated and controlled by the State Police with liaison agreements from selected local police departments. In some cases, however, as in the State of Michigan, an intelligence unit was established within the Office of Attorney General.

The Metropolitan Area Intelligence Units were similar to the statewide units except that the unit was generally operated and controlled by the local police agency.

The intelligence information developed by these projects from 1969 through 1974 resulted in the arrest and conviction of organized crime members, the

recovery of stolen property, the confiscation of contraband (such as narcotics), the diverting of organized crime capital from being invested in legitimate business, and the closing down of organized crime operations. For example:

$3 million in Rembrandt paintings was recovered in Cincinnati, Ohio.

$250 million in organized crime capital was diverted from legitimate businesses in North Carolina by preventing a sale of bonds by a legal dealer to an organized crime member.

In Miami an organized crime narcotics network with links to the New York "Families" was closed down—this "network" purchased narcotics in Nassau and smuggled it into Miami where the estimated street value of the narcotics reached $350,000 per month.

In Rhode Island, the alleged boss of the Rhode Island "Family" was convicted for murder in the Marfio/Melei gangland slayings.

In New York, a ten-county gambling ring linked to the Joseph Columbo "Family" in New York City was closed. This gambling ring had netted an estimated $100 million yearly.

These are just a few of the many cases that have been reported to LEAA by the grantees in their progress and final reports.

In addition to the operational criminal intelligence grants, the Organized Crime Program published a manual in 1972 entitled, "Basic Elements of Intelligence." The objectives of this manual are to:

1. Describe the process and application of intelligence,
2. Explore the structure, training, staffing, and security of intelligence units, and
3. Present trends in law as they may now and in the future effect the mission and functioning of the intelligence units in law enforcement agencies.

This manual has been updated and the revised edition was published in September 1976.

In planning the Organized Crime Program for Fiscal Year 1975, LEAA determined that state and local law enforcement needed assistance in developing cooperative efforts with emphasis on bringing together all the available law enforcement resources in multi-jurisdictional efforts to combat organized crime. This determination was based upon LEAA's organized crime discretionary funding experience since 1969, and the gradual change in the state-of-the-art for organized crime law enforcement. Therefore, the Organized Crime Discretionary Grant Program was revised by excluding the intelligence unit categories and replacing them with funding categories aimed at multi-jurisdictional or joint Federal, state and local projects and projects that specifically targeted certain areas of organized criminal activity, such as, white collar crime, corruption, cargo theft, and fencing.

Through its funding experience, LEAA had recognized that intelligence operations were only successful when they were part of a process involving close working relationships between the intelligence operation, the investigative operation, and the prosecution. The revised Organized Crime Discretionary Grant Program encouraged states, counties, and cities to examine their organized crime law enforcement efforts and needs on the basis of a systems approach—the coordination and working relationships between intelligence, investigation, and prosecution, and to submit applications to LEAA that reflected this multi-jurisdictional and interdisciplinary structure. Therefore, from Fiscal Year 1975 up to and including this present Fiscal Year, LEAA supports criminal intelligence operations that are a component of a much larger effort involving enforcement and prosecution.

The most successful and visual examples of this multi-jurisdictional, interdisciplinary approach in actual operation are the anti-fencing or "Sting" projects. These projects take the intelligence collected at the undercover site or storefront and give it to a staff of investigators who then work closely with the prosecutors in preparing cases for arrest and prosecution. These multi-jurisdictional, interdisciplinary anti-fencing projects have not only caused the arrest of high level organized crime figures, as in the recent operations in Buffalo, New York, and Newark, New Jersey, but have also impacted greatly on the career criminals who have made our city streets unsafe and who have been responsible for large property losses to individuals as well as businesses.

To date, "Sting" operations have been completed in 24 cities across this Nation with the following results:

More than $59 million in cash, securities, bonds and other stolen property has been recovered including firearms and drugs.

Persons charged with crime totaled 2,275, and of those charged, 2,004 have been arrested.

Between 64 and 100 percent of those charged in the various projects were identified as career criminals.

Only $1.7 million in LEAA funds has been expended to purchase the stolen property which was recovered.

Thousands of investigations have been closed—including rapes, homicides and armed robberies—as a result of information developed through the "Sting operations."

There has been a 98 percent conviction rate due to the quality and quantity of evidence.

Within 15 months of completion of the Sting operation there has been a drop in property crime rates ranging from 5 to 26 percent.

LEAA commissioned a study of 12 Sting operations. The 12 operations were carried out in 10 cities. There is an indication that the operations act as a deterrent to crime.

However, more study is required to prove that conclusively.

I have been briefed several times by participating officers after an operation has been closed, and I have been impressed by the espirit de corps among members of the units involved in the operations. The officers knew they were accomplishing something, that they were developing cases with good, strong evidence. This was a real boost for all of them.

The study stated that the director of one operation believes the operations have a long-term deterrent effect on crime because they foster uncertainty and insecurity in the minds of thieves and fences in his area. He said that after an operation closed, thieves tried to steal cash or property that was hard to trace and that one known fence in his area—a grocery store owner who bought stolen property on the side—closed his business and retired because the risk became too great.

The director added that publicity from the local newspaper helped by continuing to print a box score summarizing the disposition of those arrested. This constant reminder made thieves more cautious, and the director cited this feeling as being responsible for a downward trend of offenses in his area.

Besides recovering stolen property, the study said the "Sting" furnished information that helped solve other crimes such as murder, assault, and rape. In Las Vegas, information from an operation helped solve a murder, and in South Bend, Indiana, officials solved a triple homicide based on evidence from a "Sting."

The ten cities that participated in the study, the value of the property recovered, and the amount of buy money, include:

City	Recovered property	Buy money
Atlanta and DeKalb County, Ga	$1, 550, 691	$63, 798
Las Vegas, Nev	490, 171	61, 275
Memphis, Tenn	700, 000	27, 000
Norfolk, Va	16, 367, 756	119, 247
Pinellas County and St. Petersburg, Fla. (3 projects)	424, 057	35, 665
Savannah, Ga	118, 000	38, 000
Washington, D.C. (3 projects)	5, 635, 000	325, 577
South Bend, Ind	955, 728	63, 772
Total	26, 241, 403	734, 334

The success of the anti-fencing projects, along with projects in such other organized criminal activities as white collar crime and corruption, would have been possible without the availability of a criminal intelligence process.

LEAA recognzed its responsibilities to not only support organized criminal intelligence operations, but to also improve the abilities of the individual intelligence officer, and to develop standards for use by the heads of agencies in determining their operational intelligence needs.

LEAA recognized its responsibilities to not only support organized criminal intelligence operations, but to also improve the abilties of the individual intelligence officer, and to develop standards for use by the heads of agencies in determining their operational intelligence needs.

Since January 1972, LEAA has presented six National Organized Crime Control Conferences. Approximately 1,500 persons, including police, prosecutors, judges, and criminal justice planners, have attended these six conferences. A section of each conference covered the necessary and proper operation of a crim-

inal intelligence system. From the evaluations of the intelligence components of each conference, it became clear that law enforcement officers needed specific training in the analysis of "raw" intelligence information. Also, special training was needed to improve the capabilities of intelligence units' commanders. To meet this very real and critical need, LEAA presented three intelligence analysis and commander seminars in 1975. LEAA continued the emphasis on training law enforcement personnel in the correct and lawful operation of the criminal intelligence process by supporting organized crime institutes in Florida and California. It is LEAA's belief that misuses of criminal intelligence information can be minimized by providing those persons involved in the intelligence process with training in the proper use of intelligence information and also defining for them the consequences of improper use.

No less important is the need for leaders in State and local governments and law enforcement agencies to know what criminal justice standards they should be striving to achieve in developing their criminal intelligence operations. LEAA, through the National Advisory Commission on Criminal Justice Standards and Goals, established 17 specific standards effecting criminal intelligence operations which should be seriously considered by all administrators of law enforcement agencies and those charged with the responsibility for the planning, development, implementation, and operation of a criminal intelligence process for their jurisdictions.

The sophisticated methods of organized crime demand similar or greater expertise on the part of the law enforcement and criminal justice community. However, public attitudes toward the criminal justice intelligence process are ambivalent. One body of opinion regards intelligence activities as a necessary and appropriate crime prevention and detection function, while another is highly suspicious and critical of the intelligence function as repressive and violative of civil rights. These contradictory attitudes have resulted in State and local commitments of funds and manpower of questionable adequacy, frequently an inadequacy or absence of state laws, and legal restrictions on investigative and prosecutive procedures. For a program to be successful against organized criminal activity, the law enforcement intelligence process must be utilized to its fullest legal extent. Public misunderstanding of the real threat and dangers presented by organized crime and the lack of recognition of the crucial role of intelligence in combatting this threat has given organized criminal activity a tremendous advantage in some states.

LEAA is mindful that intelligence information must be gathered and utilized in a legal and appropriate manner. In addition to requirements imposed on grantees by law, LEAA frequently levies special requirements on fund recipients as a condition to awarding a grant.

LEAA and the Department of Justice issued on March 19, 1976, regulations which implement Section 524(b) of the Crime Control Act. The regulations require that criminal justice information systems assisted, in whole or in part, with LEAA funds or tied in with Federal systems, be secure, private, complete and accurate. The regulations provide that conviction data may be disseminated without limitation; that criminal history record information relating to he offense for which an individual is currenly within the criminal justice system may be disseminated without limitations. Insofar as nonconviction record information is concerned, the rgeulations require that after December 31, 1977, most noncriminal justice access would require authorization pursuant to a statute, ordinance, executive order or court rule, decision or order.

It is important to note, however, that intelligence and investigative information are excluded from the definition of criminal history record information, and are thus not covered by these regulations. To the extent, however, that criminal history record information is included in intelligence files, the storage, use, and dissemination of this information is governed by the regulations.

In addition to the laws and regulations, LEAA has issued, an regularly updates, a number of guidelines manuals which provide information on programs and projects for which funds are available. They provide guidance to prospective applicants regarding application requirements and guidance to grantees on their responsibilities for accounting for funds, reporting on progress, and assuring observance of applicable Federal laws and regulations. They also specify LEAA monitoring and evaluation politices and procedures.

Special requirements are often levied on a fund recipient as a condition of the grant being made. These special conditions are determined by the nature of the project for which the grant is made and any exceptional circumstances which

warrant additional limitations. Grants made for organized crime prevention programs frequently carry such special conditions to assure their propriety.

One of the most frequently used special condition requires assurance that funds will not be used for the illegal purchase or use of surveillance devices. It reads as follows:

> Subgrantee agrees not to purchase for use in the course of this project any electronic, mechanical, or other device for surveillance purposes that is in violation of the provisions of Title III, P.L. 90-351, as amended, and applicable state statute related to wiretapping and surveillance.

Any potential and actual program funded by LEAA in the area of organized crime and intelligence-gathering receives a detailed and thorough review during all stages of its operation to assure compliance with appropriate laws, guidelines, regulations, and special conditions. Where a project is supported from block grant funds, this review is largely the responsibility of the appropriate state planning agency, although LEAA still may participate in the review and audit process. When a project is supported with discretionary funds, as is the case with the bulk of major organized crime prevention efforts, LEAA maintains major review responsibility, although affected state planning agencies may also become involved.

The discretionary guideline manual contains detailed criteria for the approval, monitoring and evaluation of proposed projects. In the application, not only the project must be described, but the potential grantee as well. All proposed expenditures must be set forth completely, and the propriety of the program assured. It is during this application review process that the necessity of adding any special conditions is determined. Of particular note is the requirement contained in the *Guide for Discretionary Grant Programs*, containing the following factor by which every application is judged:

> Evidence of high integrity and ability of applicant to conform with Federal, State, and local laws, regulations, and guidelines pertaining to electronic surveillance, confidential expenditures, security and privacy of information, and other similar areas of confidentiality.

Once LEAA internal review has been completed, the application is submitted to other divisions of the Department for concurrence where applicable.

LEAA review continues during the period when the project is operating. A minimum of two monitoring site visits are conducted, the first occurring no later than 90 days after grant award. Any problems which arise are resolved, and technical assistance provided if necessary. An LEAA grant manager is assigned responsibility for each particular project and remains in colse contact for its duration. Evaluation is an ongoing process. The grantee is responsible for incorporating into its application an evaluation component. The objective of this evaluation component is the documentation and measurement of the organizational development of the project and the impact of project activities on the organized crime problem of the particular jurisdiction. Evaluatioin includes assessment of the project's internal operation and assessment of the project's impact.

LEAA's audit and inspection process is another ongoing effort which attempts to assure grantee compliance with all pertinent requirements. Audit coverage extends to receipt and expenditure of funds, managerial policy and direction, planning and operational procedures and controls, and custody, utilization, and control over non-financial resources such as property, equipment, and supplies. Particular attention is given the grantee's adherence to any special conditions which have been imposed.

Mr. Chairman, it is the position of LEAA that law enforcement intelligence-gathering plays a crucial role in combatting crime, particularly organized criminal activity. Effective law enforcement intelligence programs will continue to receive support and attention from the agency in the future.

Thank you, Mr. Chairman, for the opportunity to appear today. I would now be pleased to respond to any questions you might have.

Mr. GREGG. Mr. Chairman, on a number of occasions the Attorney General has stated that increased Federal attention should be given to organized crime, white collar crime, large scale fraud, particularly frauds against the Government, and other major criminal conspiracies including drug trafficking.

Mr. Chairman, as you well know an essential requirement for success against large scale criminal conspiracies is timely and accurate intelligence and information. Without this resource efforts against organized criminal conspiracies will not have lasting effects and will be futile.

Unless the need for intelligence information is well understood and accepted by the public and their representatives, as well as by law enforcement officials, we can expect to continue to be exploited by those who operate against the law in secrecy.

Mr. Chairman, over its history LEAA has made substantial contributions to the development of law enforcement intelligence. We believe that State and local governments, assisted by LEAA programs, are finding more efficient and effective ways of acquiring and utilizing criminal intelligence information.

We believe that this progress will continue.

One of the greatest needs is a better public understanding that criminal intelligence gathering, conducted within the law, is a legitimate and essential function of law enforcement, which must be supported if crime control efforts are to be effective.

The work of this committee can make an important contribution to the necessary public understanding of this essential function.

Thank you, Mr. Chairman, for the opportunity to appear today. Mr. Bratt, Mr. Grimes and I are ready to answer any questions that you may have.

Senator HATCH. All right. We have your statement and we will certainly put the written statement into the record.

I note that LEAA has given tremendous amounts of assistance to State and local law enforcement agencies. I want to compliment you for that.

You say in your statement that as part of your assistance program you have sought to help State and local agencies upgrade their law enforcement intelligence capabilities in various ways.

Has LEAA been the target of any harassment as a direct result of the assistance it has given to law enforcement intelligence operations?

Mr. GREGG. I would hesitate, Mr. Chairman, to characterize any activity in this area as harassment. Commentators in the media have from time to time criticized LEAA assistance to law enforcement intelligence operations. It is difficult for us to determine the motives of these critics. There often appears to be misunderstanding by people commenting on intelligence gathering regarding the nature of the activity. Part of the reason for what we deem to be inaccurate assessments of these programs may be a lack of familiarity with what is being undertaken. Considerable confusion exists.

The Agency makes every effort when these situations arise to clarify the record concerning the nature of LEAA's program. As I stated in my opening remarks, there is a need for greater understanding of these issues so that the public comprehends the necessity of carrying out this kind of activity, precisely what LEAA is doing, the standards for LEAA support, and the operating procedures and policies of people involved with intelligence gathering.

With greater understanding the potential for inaccuracies is reduced.

Senator HATCH. I have heard, for instance, that there have been

articles in the Seattle Times and other newspapers which directly attack LEAA because of their various activities.

Could you tell us something about these and would you be kind enough to submit for the record various newspaper articles or editorials or other comments that are in question?

Mr. GREGG. A recent article in the Seattle Times by Mr. David Power illustrates the confusion that can occur in this area.

Senator HATCH. Do you know who Mr. David Power is?

Mr. GREGG. The Seattle Times states he worked as a summer legal intern for an organization in Washington.

The organization is called the Center for National Security Studies. I understand the Center for National Security Studies is sponsored by several other organizations, including the Fund for Peace, the Field Foundation, and the Stern Fund.

Incidentally, this is the same organization which sponsored a study of the LEAA program a year ago, characterized as an "independent evaluation." It was a distorted and misleading study of the LEAA program. It was made public at a time when LEAA reauthorization was being considered by the Congress.

Therefore, this is not the first time LEAA has received attention from this organization.

The particular article that you referred to is very confused. It takes a number of different types of activities including law enforcement information programs, exchange of administrative data between police agencies and intelligence systems, and puts them together in rather a mishmash fashion. It reflects a great deal of misunderstanding about these programs and about LEAA's relationship to them.

I would be happy, if you like, to provide for the record an analysis of that article and some of the serious misrepresentations in it.

Senator HATCH. I would like to have you do that.

Do you know anything more about the Center for National Security Studies in Washington or these other organizations with which David Power has worked? Do you know anything further about them?

Mr. GREGG. I understand that the center has sponsored a number of other projects. We have encountered them, as I mentioned, in connection with this so-called independent evaluation of LEAA which was done last year by a Ms. Sarah Carey. That particular report was so full of error that we had to devote almost 2 months of staff analysis to simply identifying the factual mistakes. LEAA produced a 50-page rebuttal dealing just with the factual errors in the report.

Senator HATCH. I would like to have you submit your analysis of Power's article to the committee for the record.

Mr. GREGG. I will be pleased to do that, Mr. Chairman.

[The material referred to will be found on p. 193.]

Senator HATCH. Has LEAA given grants to local police departments to establish a communicative ability to exchange information with the FBI?

Mr. GREGG. LEAA has supported, in a number of instances, programs which enable police to link their communication systems with the National Crime Information System.

However, this is not an intelligence system. This is an information system dealing with stolen property such as bonds, and automobiles.

Senator HATCH. It is basically an information exchange system?

Mr. GREGG. Yes; it is.

Senator HATCH. What is the status of this program today?

Mr. GREGG. Block grant funds have supported projects which improve the capability to share this type of information.

Senator HATCH. Have you run into any difficulty because of this computerized information program or exchange program?

Mr. GREGG. Other than the routine problems that arise with respect to any project or program, I do not believe that we have had any particular difficulty with respect to this type of operation.

Senator HATCH. OK.

I know that your Agency is not in the business of gathering intelligence and that you have not been directly effected by the erosion of law enforcement intelligence capabilities. However, surely you have heard many complaints about the erosion of law enforcement intelligence and the difficulties this has created for all of the law enforcement officers.

Could you give us any indication of whether that is true or whether my presumption is true?

Mr. GREGG. Mr. Chairman, you are correct in pointing out that LEAA is not an operational law enforcement agency. LEAA's mission is to assist State and local governments involved in a great range of law enforcement activities, including intelligence activities.

LEAA has no direct evidence of this kind of erosion. What we sense—and this is difficult to articulate—is an anxiety, a concern about this area of activity. We sense a high degree of caution which could constrain the appropriate development of intelligence systems.

While this is intangible and difficult to document, contacts with people involved in this area seem to suggest that there is anxiety and concern. It would be most unfortunate if this concern translates into a reluctance to pursue these activities when, particularly at the Federal level, there is a realization of a greater need than ever to deal with the problems of organized crime, large scale frauds, drug trafficking, and other activities involving major criminal conspiracies. Intelligence gathering is absolutely essential to success against these operations.

If abuses of the last decade have resulted in undue reluctance and caution, it would be very unfortunate. Contacts with officials involved suggest that it is having that effect. Of course, Mr. Chairman, care must be taken to assure that past abuses do not recur.

Senator HATCH. I was very interested in what your statement said about your efforts to stimulate or encourage the formation of multi-State or regional organized crime intelligence systems.

I note from your statement that only one project, the New England Organized Crime Intellgience System, was never funded under this program category. This one project was terminated after 3 years of operation because the concept of a multi-State intelligence repository on organized crime was found to be not feasible. Is that correct?

Mr. GREGG. Let me ask Mr. Grimes to comment on that particular project.

Senator HATCH. Sure.

Mr. GRIMES. Mr. Chairman, the New England Organized Crime Information Center was an LEAA-supported effort that proved to be

unsuccessful due to its repository nature and lack of use by people who were suspicious of that type of information center.

We did learn several important lessons from that experience. LEAA has supported additional intelligence networks located in the lower southwest and southern part of the country.

The California Narcotics Information Network covers the entire west coast and Nevada. The Regional Organized Crime Information Center covers the southern and eastern parts of the country and includes 11 States. These States are Florida, Georgia, North Carolina, South Carolina, Tennessee, Alabama, Mississippi, Arkansas, and Louisiana, and also Oklahoma and Texas.

LEAA has helped establish the Quad-States program. The participating States are in the process of establishing a communication network involving their operations as well as the DEA information center in El Paso. The Quad-States program includes Utah, Colorado, Arizona, and New Mexico.

These are all LEAA efforts to assist multi-State information gathering intelligence networks.

Senator HATCH. What kind of information do these various networks handle?

Mr. GRIMES. About half of their efforts concern narcotics intelligence. However, the California network also deals with organized crime, as does the Quad-States program. Major criminal conspiracies are the major focus of the Regional Organized Crime Information Center. There are specific criteria for entering names or factual information. It is a manual index system dealing with known criminals. States provide information to the center and to other law enforcement agencies that have an interest in particular individuals.

Senator HATCH. On this Multi-State Intelligence Gathering System which was discontinued in New England, could you tell me why such a multi-State intelligence concept was found to be basically not feasible? I see it as a layman, and it seems to be that since organized crime almost invariably operates on a multi-State basis it would just about be essential to have a multi-State intelligence operation in order to——

Mr. GRIMES. The concept was sound. The process is what seemed to be faulty. There was a repository of information in one location. Members of the organization were required to go to the single repository. We have found that it is much better to use a pointer system, where detailed information is not contained in the center, just names, automobiles, or other indicators which can be cross indexed.

The department that holds detailed information is in the pointer system. If an inquiry is received at the information center, a response may be "Yes, we have information about that and Chief so-and-so can give you the details."

It is a one-on-one exchange. Intelligence officers are very reluctant to share large amounts of information with unknown people. They rely very heavily on their personal knowledge and rapport.

That is what has been utilized in the other centers that I previously mentioned.

Senator HATCH. In September of last year the Senate Subcommittee on Internal Security took testimony on the erosion of law enforcement intelligence from three top law enforcement officers. One

of these was Captain Justin Dentino, chief of intelligence of the New Jersey State Police.

Captain Dentino told the subcommittee,

> The free flow of intelligence between Federal, State, and local agencies is essential to an effective law enforcement operation. To the extent that this flow is restricted, law enforcement is handicapped. Today this flow is terribly restricted at every level and in every direction from city to city and from State to State and from State agencies to Federal agencies and from Federal agencies to the State and local level. This is a disastrous situation and we have got to find some way of reversing that.

Has LEAA, in the course of its contacts with law enforcement agencies across the country, run into the complaint that such agencies are today unable to exchange intelligence freely because of the limitations imposed on them by the Freedom of Information Act and the Privacy Act?

Mr. GRIMES. We have some indication, although we have no direct evidence. In discussions with police departments and training schools that LEAA has funded throughout the country dealing with organized crime and intelligence gathering, there is indication that the law enforcement community is experiencing anxiety over issues created by the Freedom of Information Act and Privacy Act. Concerns include jeopardizing informants, exposing undercover agents, and witnesses being placed in danger.

There has been some reluctance in seeking LEAA funds to establish information systems because of the regulations imposed by these acts.

Again, these are informal communications that we have received.

Mr. GREGG. Mr. Chairman, I do not know if the committee has heard yet from a Department of Justice witness. With the high priority that the administration is giving organized crime and major criminal conspiracies and with the responsibilities that DEA, FBI, and other agencies of the Justice Department have in this area, their perspective on this particular issue would probably be helpful to the committee.

Senator HATCH. OK. We appreciate that.

I find one statement in your testimony rather mystifying. First, on page 4 of your testimony you told us that after 3 years of a pilot project designed to set up an interstate intelligence analysis and dissemination center LEAA terminated the project because it was found unfeasible.

Then, on page 6 of your testimony you say that in 1975:

> LEAA determined that State and local law enforcement needed assistance in developing cooperative efforts with emphasis on bringing together all the available law enforcement resources in multijurisdictional efforts to combat organized crime.

Next you tell us that in seeking to organize broad Federal, State, and local projects aimed at organized crime you specifically excluded the intelligence function.

How on earth can LEAA spend money on apparently multijurisdictional cooperative efforts to combat organized crime while it specifically excludes support for multijurisdictional intelligence operations? How can you have a cooperative law enforcement program of any kind without cooperative intelligence programs?

Mr. GRIMES. That reference, Mr. Chairman, is to one specific project, the New England Organized Crime Network. It is not a general

policy of the Agency. In fact, LEAA funds intelligence gathering information systems. The cited quotation is misleading.

It is Agency policy to support gathering of intelligence which will result in arrest and prosecution. In the past, arrest and prosecution was not stressed. Intelligence was gathered for intelligence sake. It was found that this was not feasible. LEAA learned this through the New England experience.

Senator HATCH. The testimony of the previous witnesses has established that one of the major factors contributing to the erosion of law enforcement intelligence has been the numerous suits filed against police departments by organizations that tend to be opposed to law enforcement intelligence in general, which are engaged in a deliberate program of legal harassment.

Do you agree with this assessment or do you disagree with it?

Mr. GREGG. Mr. Chairman, we have no evidence on which we could base either agreement or disagreement with that. I am not personally aware of any such evidence.

Senator HATCH. The testimony of previous witnesses has also established that the principal organizations involved in these campaigns of legal harassment either belong to the far left themselves or else are front organizations for the far left.

Do you agree with that?

Mr. GREGG. Mr. Chairman, we have no information directly bearing on that.

Senator HATCH. The reason I am asking some of these questions is because the subcommittee has received some evidence that some very substantial LEAA funds have gone to organizations that have played a major role in the campaign of legal harassment against law enforcement intelligence.

The Subcommittee on Internal Security and LEAA had some correspondence on this subject back in late 1975 or early 1976. We will give you copies of this correspondence so that you will be in a better position to respond to my further questions.

If you could do that I would appreciate it.

You are aware, Mr. Gregg, that in Chicago as a result of civil suits brought against the police force the police intelligence files have been locked up since March of 1975. The intelligence unit has been virtually disbanded. The roster of police department employees, including undercover agents, has been made available to the litigants.

As a consequence of all these things police intelligence operations have been virtually dismantled. I assume you are aware of this.

Mr. GREGG. Generally, yes, Mr. Chairman.

Senator HATCH. You may also be aware that the organization chiefly responsible for the legal harassment that has led to this dismantling is the Alliance To End Repression.

Are you aware of that?

Mr. GREGG. No, sir.

Senator HATCH. OK.

There is an abundance of evidence linking the Alliance To End Repression with Communist front organizations. Has this been brought to your attention?

Mr. GREGG. No, sir, it has not.

Senator HATCH. OK.

I take it for granted that LEAA does not believe in giving financial assistance to Communist front organizations, but the LEAA letter to Senator Thurmond dated March 23, 1976, listed six separate grants totaling $200,000 that were made to projects of the Alliance To End Repression. The projects in question were the Illinois Prison and Jails Project, which received a grant of $30,000; Citizens Alert, which received two grants of $55,000; the Cook County Special Bail Project, which received three grants totaling about $116,000.

I would like to ask you to examine the letter sent to Senator Thurmond by Mr. Richard W. Velde, the LEAA Administrator, for the purpose of confirming that my summation here is accurate.

Mr. GREGG. Mr. Chairman, it is my understanding that LEAA, either directly or through its bloc grant programs, has never made a grant award to the alliance. My understanding is that some of the grantees you mentioned, which were funded by the Illinois State Planning Agency under our bloc grant program, did have some board members who were also board members of the alliance.

However, to our knowledge the Agency has never directly funded the alliance.

Senator HATCH. I note that Mr. Velde states in this letter that bloc grant awards of this type are administered by the State planning agencies established by the States to plan and administer the LEAA programs and that LEAA itself never approves or disapproves grant applications under the jurisdiction of the State planning agencies.

In general, that may be good rule. However, when I ask wether you don't think it would be proper for LEAA to exercise at least a limited oversight in the case of the State agencies through which it works for the purpose of making sure that LEAA funds are not used in support of organizations which are doing their best to tear down law enforcement—in particular, when these organizations are doing their best to dismantle the entire machinery of intelligence-gathering law enforcement.

Mr. GREGG. If we were aware of such a situation, Mr. Chairman, we would take whatever steps necessary, consistent with the law, to avoid it.

Senator HATCH. What I would suggest is that, if you are not aware, you ought to maybe do a little more oversight with regard to these bulk grants, because if they are going to Communist front organizations to tear down law enforcement activities and to make it more difficult to gather intelligence in this country, then the very purpose for which your agency has been developed is totally undercut and may be discarded.

Mr. GREGG. I agree completely, Mr. Chairman. As I indicated, to our knowledge LEAA has never funded such an organization.

Senator HATCH. I am going to give you a publication which is entitled "The Key for Action." This is put out by Citizens Alert, 407 South Dearborn, Chicago, Ill. 60605.

At the bottom it says, "Paid for by Illinois Law Enforcement Commission grant number 1908."

The Illinois Law Enforcement Commission is a State agency which dispenses bloc grants for your organization.

Doesn't it disturb you that Citizens Alert, which is a project of the Alliance To End Repression, which in turn is a front for the Communist movement, should be in a position to flaunt the fact that it was able to carry its anti-law-enforcement activities out with funds made available by LEAA?

Mr. GREGG. I am not personally familiar with this, Mr. Chairman, but will be happy to look into it.

Senator HATCH. Would you check into it and report back to us and let us know exactly what you find out and whether these accusations that we have heard are correct?

How much time would you need?

Mr. GREGG. I believe we could have that within a week.

Senator HATCH. If you could do that within a week or even 2 weeks we would be very grateful to you.

[The material referred to follows:]

THE NATURE OF FUNDING FOR "KEY FOR ACTION"

"Key for Action" was a monthly newsletter published by Citizens Alert, a citizens group in Chicago. Grant No. 1908 in the amount of $25,000 was awarded to that group by the Illinois Law Enforcement Commission on October 10, 1975 for one year. Within the grant was a $2,000 provision for the printing of training and educational materials and postage. "Key for Action" was published in April, May and June of 1976 under that provision. In September 1976, the name of the publication was changed to "The Bridge," and the monthly distribution schedule was maintained. Funding of Citizens Alert was reduced by ILEC for the next year, and runs out in November 1977. No additional funding of the organization is expected through ILEC, although the group plans to continue with funds it is able to raise from other sources.

Citizens Alert serves communities throughout Chicago and, according to its literature, acts as a bridge between the law enforcement community and the local citizenry. According to the attached literature, the group acts as an information exchange between these two groups and works to involve citizens in law enforcement activities. The group is responsible for getting 50–100 people per month to attend police board meetings. It has held a citywide conference to discuss problems and disseminate information. It is supported by such groups as the Urban League and the Woodlawn Citizens Association.

This information was obtained through the Illinois Law Enforcement Commission, the Illinois state planning agency.

Senator HATCH. It has also been called to the subcommittee's attention that LEAA, in the fall of 1975, awarded a grant in the amount of $135,000 to the Public Interest Law Center in Philadelphia for the purpose of providing effective legal representation to victims of police abuse.

Is that correct?

Mr. GREGG. Mr. Chairman, I do not have direct knowledge of that grant. Was that a block grant, according to your records?

Senator HATCH. It does not specify. It just says here, "Philadelphia Legal Group gets $135,000 LEAA Grant to Sue Police for Alleged Brutality." This is the Public Interest Law Center in Philadelphia. That is all I have available right now.

Mr. GRIMES. That was a block grant, sir, awarded by the Pennsylvania State Planning Agency.

Mr. GREGG. I understand that we do have information on that, Mr. Chairman. We will include that in our report to you.

[The information follows:]

INFORMATION ON PILCOP GRANT BY THE GOVERNOR'S JUSTICE COMMISSION OF PENNSYLVANIA

These materials have been obtained from the Pennsylvania Governor's Justice Commission regarding its Public Interest Law Center of Philadelphia (PILCOP) grant. On August 11, 1977 PILCOP was awarded a 12-month continuation subgrant by a split vote of the Commission.

Inasmuch as this is a block grant and LEAA neither approves nor disapproves subgrant applications under the jurisdiction of the state planning agencies, the Committee may wish to contact the Commission for further information. Thomas J. Brennan is the Executive Director of the Commission and his address is Box 1167, Harrisburg, Pennsylvania 17120.

CITY OF PHILADELPHIA, PA., POLICE DEPARTMENT,
November 29, 1977.

Mr. R. J. SHORT,
U.S. Subcommittee Criminal Law,
Washington, D.C.

DEAR MR. SHORT: In response to your telephone call of Tuesday, November 22, 1977, I am enclosing some information about PILCOP (Public Interest Law Center of Philadelphia). This information consists basically of two parts; (a) brief history of PILCOP and its funding by LEAA, (b) PILCOP statistics and Philadelphia Police Department statistics; copy of PILCOP publications; copy of correspondence between a Deputy District Attorney and PILCOP and the Philadelphia Police Departments' experiences with this organization.

Sponsored by the Philadelphia Bar Association and affiliated with the National Lawyers Committee for Civil Rights under Law, the Public Interest Law Center of Philadelphia (PILCOP) was incorporated in early 1974 and began active operations on July 1, 1974, as successor to the Philadelphia Chapter of the Lawyers Committee formed earlier in 1969.

In Fiscal Year 1975, PILCOP applied for and received a total of $148,000 in Federal Funds. This amount includes the local match required by LEAA regulations. In 1976, the program was continued, using Federal Funds amounting to $222,222. In 1977, the same organization was approved for funding in the amount of $222,222.

At the meeting of the Philadelphia Regional Planning Council at which the PILCOP application was considered for local approval, they quoted the following statistics in support of their application. They claimed in 1976 they had received 603 civilian complaints of police misconduct, of which 260 involved the use of force. In fact, the Police Department received 55 complaints against police from PILCOP (in 1977 from January to November 23, we have received a total of 35 complaints), of which only 24 involved an allegation of excessive force. A further look at these cases disclosed that at least eight were already in civil litigation, many were frivolous and of a very minor nature and several complaints were withdrawn upon investigation. Further, a number of cases were received from PILCOP long after the date the incident had occurred (6 to 18 months).

[The following material was received subsequent to the hearing and ordered into the record by the chairman.]

I would like to contrast the aforementioned data with a statistical picture of the Philadelphia Police Department activity for one year.

1976

Major crimes	77,012
Minor crimes	155,513
Services	1,080,676
Persons arrested	101,084

Additionally, there are thousands upon thousands of official unrecorded contacts between members of the Philadelphia Police Department and the public, i.e., store checks, information services, traffic control and regulation, etc.

The Philadelphia Police Department's experiences with PILCOP can be summed up as follows:

The request for funding made by PILCOP asked that state discretionary funds be used for the purpose of receiving allegations of Police Abuse strictly within the confines of the City of Philadelphia. This is in direct violation of the

Governor's Justice Commission policy which provides that discretionary funds available to the State will be only used for programs which have multi-regional impact. PILCOP operates only within the geographical boundaries of Philadelphia.

During the life of these projects, large increases have been made of staff necessary to operate the PILCOP program. These increases have been based on unsubstantiated projections of case-load increase. No such increases have been empirically documented and no funds have ever been removed from PILCOP because of their projections not being met.

Also, although the application addresses the intention of PILCOP to provide direct impact on improving police-community relations, the end result of the program has been to polarize certain communities in Philadelphia against their Police Department (as evidenced by the enclosed publications).

It is felt by the Philadelphia Police Department that LEAA's funds are being used in this instance to assist the private bar. The PILCOP organization will develop information, interview witnesses and do all of the legal groundwork to the presentation of a case in civil litigation. This entire file is then turned over to a lawyer, selected from a list of lawyers available to PILCOP, without cost to either the legal agency or to the client.

This, in spite of the fact, that LEAA funds over the last three years have diminished substantially, disallowing the funding of many good programs aimed at reducing crime. While LEAA funds have diminished, PILCOP has escalated its financial requests.

PILCOP has developed intelligence files on individual members of the Philadelphia Police Department based on mere allegations.

Public funds are used by PILCOP to publish a monthly news letter entitled "Probable Cause" which is not only demeaning to police, but which also carries certain alleged instances of police abuse, on a step by step basis, using only statements of witnesses who are acceptable to the PILCOP staff. These publications are distributed to the legal fraternity, including members of the bench. This, in spite of the fact that the same members of the judiciary who receive this document are later being asked to sit in judgment on policemen who might be prosecuted either criminally or civilly.

Thank you for your interest and if we can be of any further assistance, please feel free to contact us.

Sincerely,

F. A. Scafidi,
Chief Inspector, Internal Affairs Bureau.

District Attorney's Office,
Philadelphia, September 26, 1977.

Anthony Jackson,
Police Project Director, PILCOP,
Philadelphia, Pa.

Dear Mr. Jackson: I have had occasion to peruse your December 1976 and March 1977 issues of "Probable Cause". It is my profound hope that these issues are not typical.

To be sure, each issue contains a variety of fair comment. However, the comic-book format derogates both the comment and the reader. The puerile cartoons of people and events ill-suits the public's need to know.

Further, the exclusive use of the word "execution" to characterize police shootings is pure hysteria, and this, sir, cannot in candor be denied.

I am chiefly perplexed at your targeting on specific and named officers. Are they not entitled to the same measure of protection of rights as civilian defendants, of whom you are so solicitous. When individual officers, accused of wrongdoing and acting on advice of counsel, assert their rights, cannot you hesitate before imposing your verdict. When a civilian tells you something, does your credibility have no limits?

People are complex, and events they become engaged in are bridged with motives and emotions. These are difficult for responsible people to reconstruct. Our system of justice at least recognizes this in practice, and interposes due process and fair play between accusation and judgment. PILCOP could do the same. PILCOP's purpose for receiving LEAA funds is to restore, not destroy trust and respect for our system of justice.

If your brief is against institutional government's neglect of a problem, then it would be eminently reasonable for you to address yourself to institutions within government, not those individuals charged with the pursuit of public order and safety on the street and in the alley. For it is the answerability of government that you seek, not the verbal lynching of individual police officers. Taxpayers would understand PILCOP pursuing its goals vigorously; but, PILCOP is degrading those goals and purposes by creating an atmosphere of fear and reaction.

I have also examined the "Citizen's Manual on Police Abuse". PILCOP's role in this publication has me puzzled. Consider the following:

(1) PILCOP claims that the publication was (to be) a PILCOP effort (see grant application);

(2) Two of its contributors are 100% federally-funded PILCOP employees;

(3) The manual is copyrighted not by PILCOP, but by Philadelphians for Equal Justice.

There appears to be an anomaly between PILCOP's claims and reality. Now I ask you, sir: Have your employees had the intellectual honesty to render the public their money's worth, or have their contributions to the manual, privately copyrighted, been rendered at public expense?

This same manual uses syndicated cartoons. Is it conceivable that federal monies have been used to infringe on private copyrights?

In closing, I urge PILCOP to consider commending from time to time, those police officers who do so much for our City; in the last analysis, their goals are surely your own.

Very truly yours,

ESTHER R. SYLVESTER,
Deputy District Attorney,
Investigations Division, City of Philadelphia.

PILCOP,
Philadelphia, Pa., October 21, 1977.

ESTHER R. SYLVESTER, Esquire,
Deputy District Attorney,
Philadelphia, Pa.

DEAR MS. SYLVESTER: Your correspondence of September 26, 1977, manifesting your disfavor and indignation at the Law Centers efforts toward the resolution of police abuse problems strikes me as peculiarly inappropriate given the woeful failure of the District Attorney's office to address the complaints of police abuse in Philadelphia.

Any effort such as *Probable Cause* is subject to improvement, and we solicit and appreciate fair comment directed to improving that work. In fact, we are changing many of our editorial procedures in order to do so. However, we resent attempts to belittle our work made by persons who are looking for an excuse for their own inaction—inaction which was repudiated by the voters of this City last spring. I find little in your letter reflecting any desire to genuinely alter this pattern of inaction by public officials.

It is significant that you point not to errors of fact but to editorial judgments about methods of presentation. Although many of the articles in *Probable Cause* to which you object express a view contrary to that held by the Police Department, we have not restricted its circulation, or contributors. Indeed, before the first edition the Police Department was invited to submit articles for unedited publication, but no articles have been forthcoming.

You have objected to the fact that *Probable Cause* has, at various times, named particular officers in connection with acts of abuse. Certainly that is consistent with the manner your office and the Police Department on a daily basis treat accusations against individuals. Indeed, we believe the alternative is to indict the entire Police Department for acts of some of its members. The specific situations have been presented to acquaint the public with the specific acts that are committed rather than generalizations that would castigate many of the other police officers within the Department. We are as concerned as you—and maybe more so—with the protections of civil rights for all people and we hesitate before taking any action that might jeopardize or violate the protections

that are afforded to every citizen. To ensure fairness in this matter however, I can assure you that we will report any acquittals after trial of indicted officers.

It is also peculiar that you would suggest that police, as public servants are beyond the scrutiny of those they are sworn to serve and protect. The most vital civil rights—of life and liberty—are directly threatened when police take their power carries a high degree of responsibility and the faith of the people of power to wantonly instill fear, to harass and to injure. This authorization of power carries a high degree of responsibilit yand the faith of the people of Philadelphia that its laws will be faithfully and responsibly executed. And when public officials violate the duty that its citizens prescribe, than that public official ought not continue to serve.

The creation and continuance of the Police Project is based upon the deficiency of the present governmental mechanisms for resolving the problems of police abuse. Our justice systems recognizes and requires that justice be meted out to all—police and citizens alike, in a fair and equitable manner. Justice cannot be blind to the abusive acts of police while punishing citizens for acts that are similarly committed. Any destruction of trust and respect for our system of justice cannot and should not be ascribed to the Law Center, but rather to those agencies that have failed their sworn duty to uphold the dictates of our citizens. The aggressive investigation and prosecution of all law breakers would be consistent with that ideal.

The Police Project is indeed attempting to attack an institutional problem, but the institution of the police department is composed of many individuals. One cannot responsibly ignore the complicity of the individuals who compose the institution that is under scrutiny. The targeted problem is not necessarily with the institution of police, but rather some members of that institution who are apparently ill-suited for the responsibility that is expected. And to that aim we remain unalterably committed and invite your cooperation and understanding.

Finally, your letter complains about LEAA funds being used to pay for a Citizen's Manual On Police Abuse copyrighted or published by another group. That situation would indeed be disturbing, but the fallacy is that you have been reading the wrong manual. The manual the LEAA is paying for has not yet been published, and any copyright will lie with LEAA in accordance with our grant conditions. Frankly, I would have expected that a Deputy District Attorney, Investigations Division would have discovered that fact before rushing to circulate such an accusation.

Yours very truly,

ANTHONY E. JACKSON,
Police Project Director.

DISTRICT ATTORNEY'S OFFICE,
Philadelphia, Pa., October 26, 1977.

ANTHONY E. JACKSON,
Police Project Director, PILCOP,
Philadelphia, Pa.

DEAR MR. JACKSON: The Deputy for Investigations was well aware of what she was reading. She was well aware that PILCOP's name was prominently displayed on the Citizens Manual For Police Abuse; that two of your staff members who are paid by LEAA funds, contributed to its production.

I am pleased to learn that you are changing the editorial procedures in *Probable Cause.* Hopefully, it will project a balanced view for the community.

As you are well aware, the investigation and prosecution of brutality complaints are difficult. It is easy to make accusations and blustering speeches about brutality, but most difficult for a prosecutor to meet the burden of proof in a criminal case which is beyond a reasonable doubt. I have had first-hand experience in the trial of these cases.

If you want to call "inaction" the arrest and prosecution of fourteen police officers by the District Attorney's Office, that is your prerogative. If you had any real sense about the reason for PILCOP's existence, your attitude would be much different.

Very truly yours,

ESTHER R. SYLVESTER,
Deputy District Attorney, Investigations Division.

U.S. Department of Justice,
Associate Deputy Attorney General,
Washington, D.C., October 27, 1977.

Ms. Esther R. Sylvester,
Deputy District Attorney, Investigations Division, District Attorney's Office, Philadlphia, Pa.

Dear Ms. Sylvester: Attorney General Bell has asked me to respond to your recent letter concerning funding by the Law Enforcement Assistance Administration of the Public Interest Law Cener of Philadelphia.

He has asked me to review the matter with LEAA officials. I appreciate your bringing this matter to our attention.

Sincerely,

Walter M. Fiederowicz.

Senate of Pennsylvania,
Harrisburg, Pa., October 31, 1977.

Esther R. Sylvester,
Deputy District Attorney, Investigations Division, City of Philadelphia, Philadephia, Pa.

Dear Miss Sylvester: A copy of your letter to PILCOP dated September 26, 1977 was furnished to me in connection with PILCOP's recent application to LEAA for funds.

I thoroughly agree with your position and applaud it.

When PILCOP's application came before us, I voted against it, and asked that they furnish several copies of their most recent publication. The copies were not forthcoming from PILCOP, and I hope to explore this failure at a future meeting.

Keep up the good work. Mrs. Forney sends greetings also.

Cordially,

Richard A. Snyder.

Senator Hatch. The Public Interest Law Center is sponsored by the Philadelphia Bar Association, as we understand it. I am not saying that there is not police abuse. I know that instances of police abuse do occur even in the best of police forces.

Therefore, when it does occur, I believe it should be firmly dealt with and I commend the Philadelphia Bar Association for wanting to help such victims.

The question I want to ask, though, is whether such financial support is really a proper function for an agency set up by the Congress for the purpose of providing aid to our law enforcement agencies.

Mr. Gregg. Mr. Chairman, a great deal of discretion has been delegated by the Congress under the terms of the Crime Control Act to the State agencies to make awards.

I will look into the legal aspects of that project as an appropriate activity under Crime Control Act authority. The law, however, gives broad discretion to the State agencies regarding expenditure of funds. This may be legitimate under the act.

Senator Hatch. OK.

[Material referred to follows:]

LEAA Support to Projects for the Legal Counselling of Police Officers

Both block and non-block funds have been used to support a variety of counselling programs to aid police officers in carrying out their duties without incurring legal liability or decreasing the potential for successful prosecution. Attached are printouts which describe a number of these grants to jurisdictions throughout the country over the past several years. In addition, the Dallas Police Legal Liaison Division has been chosen as an Exemplary Project and a copy of LEAA's publication on the work of the Division is also enclosed.

It is important to note that the extent to which the police legal counselling programs can participate in the defense of individual officers against brutality or other similar charges would be decided by the respective unit of government or its police agency. Furthermore, many of the grants involve a training component and undoubtedly these play a role in diminishing the chances of participating officers' future involvement in brutality cases or charges of civil rights violations.

Senator HATCH. I know that there are genuine instances where there are cases of police brutality or police abuse. I am also certain that many phony charges are brought in order to stymie police activity—intelligence activities. It is a frequently used form of harassment of law enforcement officers, and I cite title 42, section 1983 of the USCA.

Has LEAA ever funded a program designed to assist law enforcement officers who may be falsely accused of abuse or brutality?

Mr. GREGG. Not under our categorical programs to my knowledge. It is possible that such a program has been funded by the States under their authority. We can check into that and let you know.

Senator HATCH. I would suggest that that might be a more worthy use of the funds. It highlights the program, but it also lets the police know that there is someone on their side so that they are going to have some protections and not just be harassed by those who want to keep the police bottled up and tied up.

Mr. GREGG. The agency has funded a number of programs to increase the legal advice to police departments. These have been very successful in terms of improving rates of prosecution.

I am not sure whether that service extends to the area that you mentioned but we can check and will provide information for you.

Senator HATCH. OK.

I think it is very important that we go over these materials. Sometimes you have to recognize some of the problems that have been raised today. Maybe in future hearings like this we can raise them together and solve some of the problems that we have in this particular area.

We are really concerned, because we have had, for instance, the head of the Secret Service in here saying that law enforcement intelligence gathering activities have been reduced to about 25 percent of what they were before the Freedom of Information and Privacy Acts were enacted.

He said that it is increasingly more difficult to protect the President of the United States, the 18 top level officials, and all of the foreign dignitaries that come to this country because of the lack of intelligence gathering capabilities in this country.

I would think that LEAA could assist in finding out how we could solve this problem and maybe assist in some studies to determine whether or not the Freedom of Information and Privacy Acts are as valid today as they were thought to be then.

We have also had a lot of indication in the testimony that these acts were meant to be basically cost free enforcement acts and that they really would take very little time in the law enforcement agencies to comply with the requests.

Now, we are finding that these acts are tying up some of our top people throughout the country and throughout the world, as a mat-

ter of fact. We have found that this is becoming increasingly a big problem in this country and that crime is running rampant because we do not have the intelligence gathering activities and information systems that we have had prior to the enactment of those two acts.

Therefore, these are some areas that we are extremely interested in getting into. We will be interested in the materials that you have indicated you would like to supply to us.

We appreciate your coming today and we appreciate your courteous answers to our questions. We want to thank you for your time.

Mr. GREGG. Thank you very much. We appreciate the invitation to be here, Mr. Chairman.

Senator HATCH. Thank you.

The subcommittee will stand in recess, subject to the call of the Chair.

[Whereupon, at 10:16 a.m., the subcommittee stood in recess, subject to the call of the Chair.]

APPENDIX

ANALYSIS BY LEAA

Analysis by LEAA of Article Entitled "Police in the United States Could Be Spying on You!" by David E. Power in the Seattle Times

On September 6, 1977 an article was printed in the Seattle Times, entitled "Police in the United States Could be Spying on You!" The article is a mixture of fact and fiction which appears to have been intended to persuade its readers that Law Enforcement Assistance Administration funds are used to support illegal, repressive or otherwise questionable law enforcement activities aimed at law abiding citizens. This false premise is supported by a variety of erroneous or distorted statements by the author of the article, David E. Power.

Mr. Power, representing the Center for National Security Studies, has submitted numerous requests to LEAA under the Freedom of Information Act for copies of files, reports and project data. It is especially disappointing, therefore, to find that his article reflects such a paucity of accurate information concerning both LEAA and law enforcement intelligence activities.

Some of the most blatant inaccuracies in the Power article deserve comment and clarification.

(1) *Implications of LEAA funding of Inter-state Organized Crime Index* (IOCI).

The most substantially damaging inaccuracies in the article are contained in those sections which: describe the operation and funding of the Interstate Organized Crime Index (IOCI) and Law Enforcement Intelligence Unit (LEIU); discuss the implications of LEAA support for the IOCI; and attempt to support the conclusion that development of the IOCI system has fostered development of a "federally-funded electronic network used to spy on United States citizens."

Specifically, with respect to the operation of IOCI, the article indicates that participating agencies in IOCI could previously "obtain intelligence data by asking headquarters to search card files by hand" and that such agencies can now "transmit intelligence data across a network which can handle up to 26,000 messages an hour." This statement is basically misleading since (as later acknowledged in the article), the IOCI system was (1) specifically designed to operate as an Index only (e.g., data maintained at system headquarters is limited to that necessary to identify the subjects involved and to indicate the existence of agencies holding data on, or interested in, such subjects) and (2) the IOCI system configuration has specifically been revised to preclude automated access by participating agencies to the Index and/or to the data bases of other participating agencies. Accordingly, contrary to the implications of the noted statements, the IOCI system supports neither transmission of intelligence data nor automated interface between participating agencies.

A subsequent paragraph in the discussion of IOCI takes the view that Congress has expressed concern over intelligence activity in connection with the recent debates concerning "message switching." Although it is true that the cited statement by Congressman Moss does make reference to intelligence gathering, the argument as a whole is totally misleading since the debate concerning "message switching" was (1) concerned solely with transmission of "criminal history" information (rather than intelligence), and (2) focused largely on the issue of Federal control over state law enforcement activity (rather than the issue of transmission of intelligence data among state and local agencies only).

As indicated previously, confusion of this type renders the arguments in the article generally misleading and erroneously damaging. The confusion over the "message switching" issue is surprising since the debate arose specifically in connection with potential reconfiguration of the FBI Computerized Criminal History (NCIC/CCH) program, which is specifically limited to criminal history information.

Another section of the article discusses the "public information" requirement applicable to data included in the IOCI index (e.g., Data in IOCI is limited to

information included in public records or resulting from public proceedings) and essentially implies that the public information limitation is basically irrelevant. Specifically, this section of the article indicates that "LEAA imposes no . . . ("public information") . . . requirement" to limit entry of "miscellaneous" data on LEIU file cards; that "information which does not qualify as 'public record' is obtained by wire-tapping, bugging, planting informants or undercover police officers and physical surveillance;" and that the "public record" requirement is based solely on an LEAA Special Condition and hence can be eliminated "with the flick of a pen." These statements are again grossly misleading since: (1) imposition of data-limitation requirements on LEIU would be inappropriate since LEAA does not directly fund LEIU); (2) the "public record" limit was considered necessary to protect privacy interests of data which is available directly through the IOCI system (and would not be necessary or appropriate in connection with data which is maintained and only released under controlled conditions by the collecting agency); (3) there is no support for the cited allegation regarding the source of non-public-record data and no indication that such procedures, if used, are either illegal or contrary to any state or local regulations or policy; (4) the "public record" requirement is not based solely on special conditions, but is included in the operating procedures established and adopted by IOCI.

A final factor which should be noted in considering the discussions relating to LEAA involvement in IOCI and/or LEIU activities relates to the allegation that such support can be tied to support for "spying' or other illegal information gathering practices. Specifically, it should be noted that the existence of LEAA support for development of systems to facilitate information exchange can, in no way, be deemed to condone or encourage illegal activity and that, of equal relevance, the allegations regarding illegal selection of "subjects" for intelligence surveillance cannot (if true) be deemed a result of LEAA activity.

(2) *Confusion between differing law enforcement systems.*

The initial sections of the article exhibit substantial confusion regarding the distinctions between the varying systems (both automated and manual (which have been developed to serve differing law enforcement functions.

This confusion is particularly apparent in connection with arguments allegedly supporting the existence of a "nationwide chain of police computers used to collect and transmit intelligence data on American citizens," and the existence of a "massive, federally-funded electronic network used to spy on United States citizens."

Specifically, in support of this position, the article indicates: (1) that "The federal LEAA spent $100 million the past 10 years in most of the 50 states to develop several of these computerized "telecommunications" systems: (2) that "LEAA's predecessor, the Office of Law Enforcement Assistance, financed the National Crime Information Center (NCIC) computer system, which links at least 80 computer terminals . . ." and (3) that "another computer system links every one of the 50 state capitals through a central computer in Phoenix."

Although each of these references appears to describe some existing law enforcement system, the general confusion is apparent since none of the systems are directly concerned with transmission or storage of intelligence data.

Specifically, the reference in (1) above to expenditures of "$100 million" is clearly an inaccurate estimate of funds expended on automated intelligence communication systems. Although the actual category of expenditures is not clear, the figure appears to represent an estimate of all direct LEAA support for development of state information and communications system. Of this amount, it should recognized that approximately $65 million has been expended in connection with the Comprehensive Data Systems (CDS) program. Under this program, funds have been made available to assist states in developing automated systems to improve collection of criminal justice statistical data and to provide complete and accurate criminal history information on a state-wide basis. Criminal history information systems developed under this program are subject to the LEAA Regulations governing privacy and security of criminal history information (28 CFR Part 20), and are not designed for collection or transmission of intelligence data. Other automated systems developed with LEAA direct support include State Judicial Information System (SJIS) which contain court-related data: Offender-Based State Correctional Information System. (OBSCIS) which contain correctional data, and PROMIS, a prosecutor management system. Of particular importance, however, in considering this reference to the level of LEAA expenditure, is the fact that to date no more than a total of $1.6 million dollars has been provided in direct LEAA support for development of auto-

mated capacity directly associated with intelligence data systems. Specifically, these funds have been expended over a period of approximately 5 years to support development of the prototype Interstate Organized Crime Index (IOCI) which, as indicated earlier is designed as an Index only and provides no automated interface between participating agencies and/or the index data base.

The implications of the reference to "NCIC" system is also somewhat confusing since the National Crime Information Center (NCIC) is operated by the FBI and is not currently funded by LEAA, (support had been made available for original system development only). Of particular relevance, however, is the fact that the major categories of data included in NCIC are concerned with stolen cars, stolen securities, "want/warrants" etc., and that individually identifiable criminal data is limited to criminal history (rather than intelligence data. Information transmitted through NCIC therefore does not include intelligence data.

The remaining reference, to a system linking states through a computer in Phoenix, we assume refers to the National Law Enforcement Telecommunication System (NLETS). Again, contrary to the general implications of the article, NLETS is designed merely to facilitate ongoing communications between law enforcement agencies and contains no component designed for intelligence transmission and/or storage.

In keeping with this "communications" objective. NLETS is designed as a "transparent system" (i.e. it does not create a record of message content) thus eliminating the possibility of illegal disclosure or monitoring of individual agency transmissions. NLETS is operated under state, rather than Federal control, and has recently adopted procedures to facilitate participating agency compliance with LEAA Regulations governing privacy and security of criminal history information.

As indicated, the systems referred to in the article are not duplicative and accordingly, do not support the contention that "the technology of such networks is redundant. . . ." The author should have recognized that: (1) the NLETS system includes no data bank, (index or repository) and is thus, distinguishable from NCIC (which serves primarily as an "information"—rather than communications—system) ; (2) that NCIC (as distinguished from NLETS) does not provide a capability for direct state-to-state communications on any subjects (including intelligence) ; and (3) that the CDS program (under which automated criminal history information systems are being initiated at the state-level in a majority of states) provides no direct support for the interstate communications made possible under NLETS.

OCTOBER 28, 1975.

Mr. RICHARD W. VELDE,
Administrator, Law Enforcement Assistance Administration,
Washington, D.C.

DEAR MR. VELDE: The Subcommittee on Internal Security is now conducting an investigation into the nationwide drive against law enforcement intelligence operations.

In connection with this investigation, please provide me with information from your Grant Management Information Center reflecting all discretionary and block grants given to the State of Illinois for the years 1970 through June 30, 1975, inclusive. Further, I would like to have all available information relative to grants made by LEAA to the following organizations in Illinois and the intended use of funds by these organizations:

1. Alliance to End Repression
2. Bail Bond Project of Cook County
3. National Committee Against Repressive Legislation
4. Chicago Committee to Defend the Bill of Rights
5. Mid-West Committee for Protection of the Foreign Born
6. Chicago Peace Council
7. Chicago Cook County Criminal Justice Committee
8. Citizens Alert Project
9. Citizens Committee on the Media
10. Illinois' Prisons and Jails Project
11. Citizens Visiting Committee

I also will need information on the Composition of the Illinois Law Enforcement Commission and the Chicago Cook County Criminal Justice Committee for

the years 1970 through June 30, 1975, inclusive. How and when they were constituted, their relation to the Washington, D.C. based Law Enforcement Assistance Administration; their authority to independently disburse funds and their accountability for those funds. Please inform me of the methods used by the Illinois Law Enforcement Commission and the Chicago-Cook County Criminal Justice Committee in determining the validity of organizations requesting grants and establishment of priorities, once they have determined request to be of a valid nature. Also the names of any organizations and/or individuals authorized to act on behalf of the Illinois Law Enforcement Commission and the Chicago-Cook County Criminal Justice Committee in determining the disbursement of such grants.

If you have any questions pertaining to this request, please contact Mr. R. J. Short, Senior Investigator for the Subcommittee on Internal Security, telephone 224–8248.

Your assistance in this matter is appreciated.

With warmest personal regards,

Senator STROM THURMOND.

NOVEMBER 12, 1975.

HON. STROM THURMOND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR THURMOND: This is in response to your letter of October 28, 1975, requesting information concerning the Law Enforcement Assistance Administration program in the State of Illinois.

Transmitted herewith are printouts from our Grants Management Information System which provide all information available as of October 29, 1975 on discretionary and block grants awards in Illinois for the years 1970 through June 30, 1975. A search of these records disclosed no grants to any of the 11 organizations listed in your letter.

The following is submitted in reply to your additional questions:

1. Question: Who served on the Illinois Law Enforcement Commission for the years 1970 through June 30, 1975?

Answer: See the personnel listing furnished by ILEC on Attachment A.

2. Question: Who served on the Chicago Cook County Criminal Justice Committee for the years 1970 through June 30, 1975?

Answer: See the personnel listing furnished by CCCCJC on Attachment B.

3. Question: How and when was ILEC constituted?

Answer: By Executive Order Number 1, dated January 29, 1969, signed by then Governor Richard B. Ogilvie.

4. Question: How and when was CCCCJC constituted?

Answer: From 1969 through 1971 the City of Chicago and Cook County had separate, planning units. As a result of LEAA guidelines they were merged into one unit in January 1972. The original planning units were created as a direct result of the Omnibus Crime Control and Safe Streets Act of 1968 and the consequent creation of ILEC.

5. Question: What is the relationship of ILEC and CCCCJC to LEAA?

Answer: Both agencies are part of the state's LEAA-funded planning structure. (See Sections 302 & 303, P.L. 93–83.) CCCCJC provides criminal justice planning for Chicago and Cook County for incorporation in the Illinois comprehensive criminal justice improvement plan produced annually by ILEC. The State plan is submitted to the LEAA Regional Office in Chicago for review and approval. LEAA block grant funds for Illinois are awarded to ILEC based on the approved plan.

6. Question: What is the authority of ILEC and CCCCJC to disburse funds independently?

Answer: Of the two agencies only ILEC has authority to disburse funds. Based on approval by LEAA of the Illinois annual comprehensive plan, ILEC may award and disburse funds to agencies and for projects included in that plan.

7. Question: How is ILEC accountable for block grant funds?

Answer: All state planning agencies receiving LEAA block grant funds, including ILEC, are required to administer those funds in accordance with Guideline Manual M 7100.1A, *Financial Management for Planning and Action Grants*, a copy of which is enclosed. Each SPA is audited at least bi-annually by the state auditor general or his designee, and periodically by LEAA's Inspector General.

8. Question: What are the methods used by ILEC in determining the validity of organizations requesting grants?

Answer: In the vast majorty of cases the validity of grantees derives from the fact they are official units of state or local government. The status of a private, not-for-profit organization that receives funds is individually reviewed by ILEC before an award is made.

9. Question: What are the methods used by ILEC in establishing priorities once a request is established as valid in nature?

Answer: Priorities are incorporated in the annual comprehensive state plan and, in effect, exist before requests for funds are acted upon.

10. Question: What are the names of any organizations or individuals authorized to act on behalf of ILEC in determining the disbursement of grants?

Answer: Each state planning agency is required by the Omnibus Crime Control and Safe Streets Act of 1968, as amended, to retain sole authority for making grants.

Your interest in the programs of the Law Enforcement Assistance Administration is greatly appreciated. Please let me know if you wish us to furnish additional information.

Sincerely,

RICHARD W. VELDE, *Administrator.*

U.S. DEPARTMENT OF JUSTICE,
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,
Washington, D.C., March 23, 1976.

HON. STROM THURMOND.
U.S. Senate,
Washington, D.C.

DEAR SENATOR THURMOND: This is in further response to your letter of October 28, 1975, requesting information concerning the Law Enforcement Assistance Administration program in the State of Illinois.

Subsequent to our letter of November 12, 1976, to you on this subject, we have received information concerning block grant awards by the Illinois Law Enforcement Commission to three of the organizations listed in your letter. Information on the individual grants follows:

Illinois Prisons and Jails Project:
Grant No. 1623
Award, $30,000
Term of award, 2/29/76 to 5/31/76.
Citizens Alert, Inc.:
Grant No. 1908
Award, $25,000
Term of award, 10/1/75 to 9/30/76.
Grant No. 1365
Award, $30,000
Term of award, 10/1/74 to 9/30/75.
Cook County Special Bail Project, Inc.:
Grant No. 1606
Award, $57,807
Term of award, 2/15/75 to 3/15/76.
Grant No. 1220
Award, $36,282
Term of award, 1/1/74 to 2/28/75.
Grant No. 737
Award, $22,152
Term of award, 1/1/73 to 12/31/73.

As you know, block grant awards of this type are administered by the state planning agencies established by the states to plan and administer the LEAA program. In Illinois, this state agency is ILEC. LEAA neither approves or disapproves subgrant applications under the jurisdiction of the state planning agencies, and each state makes those decisions on the basis of its own evaluation of needs and priorities.

Your interest in this matter and your support of the programs of the Law Enforcement Assistance Administration is greatly appreciated.

Sincerely,

RICHARD W. VELDE, *Administrator.*

INDEX

[NOTE.—The Senate Criminal Laws and Procedures Subcommittee attaches no significance to the mere fact of the appearance of the name of an individual or organization in this index.]

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